Supreme Court, U.S.
FILED
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No. 94-1140

(6)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

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44 LIQUORMART, INC. and
PEOPLES SUPER LIQUOR STORES, INC.,
Petitioners,

v.

STATE OF RHODE ISLAND, and
RHODE ISLAND LIQUOR STORES ASSOCIATION,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

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JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED DECEMBER 27, 1994
CERTIORARI GRANTED MAY 1, 1995

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U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND
(Providence)

Civil Docket for Case #: 92-CV-115

44 LIQUORMART, INC., *et al.*

v.

RACINE
Assigned to: Judge Raymond J. Pettine

DOCKET ENTRIES

DATE	No.	PROCEEDINGS
2/28/92	1	COMPLAINT filed; FILING FEE $120.00 RECEIPT #25201 (pd) [Entry date 03/02/92]
2/28/92	—	SUMMONS(ES) issued (pd) [Entry date 03/02/92]
3/2/92	—	CASE REFERRED to Magistrate Judge Jacob Hagopian (pd)
3/9/92	2	MOTION by 44 Liquormart, Inc., Peoples Super Liquor for Betsy G. Roberti to Appear Pro Hac Vice (cz)
3/9/92	3	MOTION by 44 Liquormart, Inc., Peoples Super Liquor for Evan T. Lawson to Appear Pro Hac Vice (cz)
3/19/92	4	RETURN OF SERVICE executed as to Kate F. Racine 3/12/92 Answer due on 4/1/92 for Kate F. Racine (pd) [Entry date 03/20/92]

DATE	No.	PROCEEDINGS
3/23/92	5	ANSWER to Complaint by Kate F. Racine (Attorney Rebecca Tedford Partington), (pd) [Entry date 03/25/92]
3/26/92	—	Motion(s) referred: [3-1] motion for Evan T. Lawson to Appear Pro Hac Vice referred to Magistrate Judge Jacob Hagopian, [2-1] motion for Betsy G. Roberti to Appear Pro Hac Vice referred to Magistrate Judge Jacob Hagopian (pd)
4/8/92	6	AMENDED ANSWER to Complaint by Kate F. Racine: amends [5-1] answer (pd) [Entry date 04/13/92]
4/13/92	7	ORDER granting [2-1] motion for Betsy G. Roberti to Appear Pro Hac Vice (signed by Magistrate Judge Timothy M. Boudewyns) (jh) [Entry date 04/14/92]
4/13/92	8	ORDER granting [3-1] motion for Evan T. Lawson to Appear Pro Hac Vice (signed by Magistrate Judge Timothy M. Boudewyns) (jh) [Entry date 04/14/92]
4/17/92	9	MOTION to Intervene by RI Liquor Store Association (cz)
4/24/92	—	Pre-trial conference set before Magistrate Judge Hagopian at 11:30 5/12/92 (cl)
5/5/92	—	Motion(s) referred: [9-1] motion to Intervene by RI Liquor Store Association referred to Judge Raymond J. Pettine (pd)
5/6/92	—	RECEIVED from Betsy G. Roberti and Evan T. Lawson $40.00 for admission pro hac vice. Receipt #25667 (cz)
5/6/92	10	Stipulation: Plaintiff may have up to and including 5/20/92 to respond to the Motion to Intervene. (cz)

DATE	No.	PROCEEDINGS
5/12/92	11	SCHEDULING ORDER setting Discovery cutoff 8/12/92; Pretrial Memorandum Deadline 8/26/92; (signed by Magistrate Judge Jacob Hagopian) (cl)
5/12/92	12	ORDER granting [9-1] motion to Intervene by RI Liquor Store Association (signed by Judge Raymond J. Pettine) (cz)
5/12/92	—	Motion(s) no longer referred: [9-1] motion to Intervene by RI Liquor Store Association (cz)
5/12/92	13	OBJECTION by 44 Liquormart, Inc. to [9-1] motion to Intervene by RI Liquor Store Association (pd) [Entry date 05/13/92]
5/14/92	14	MOTION by 44 Liquormart, Inc., Peoples Super Liquor to Vacate [12-1] order (cz) [Entry date 05/19/92]
6/3/92	15	ENTRY of appearance for RI Liquor Store by William P. Gasbarro (cz) [Entry date 06/05/92]
6/4/92	16	NOTICE of by 44 Liquormart, Inc., Peoples Super Liquor of Withdrawal of Appearance of Betsy G. Roberti. The appearance of Evan T. Lawson of this firm remains in effect. (cz) [Entry date 06/05/92]
6/10/92	—	Motion(s) referred: [14-1] motion to Vacate [12-1] order referred to Judge Raymond P. Pettine (pd)
6/16/92	17	ORDER granting [14-1] motion to Vacate [12-1] order. The m/intervene is referred to the Mag. Judge for disposition (signed by Judge Raymond P. Pettine) (pd)
6/25/92	—	Motion hearing re: [9-1] motion to Intervene by RI Liquor Store Association at 11:00 7/14/92 before Magistrate Judge Hagopian (cl)

DATE	No.	PROCEEDINGS
7/8/92	18	ANSWER to Complaint by RI Liquor Store (Attorney), (pd)
7/16/92	19	NOTICE by Kate F. Racine to take deposition of People's Super Liquor Stores, Inc. (cz) [Entry date 07/17/92]
7/27/92	20	MOTION by 44 Liquormart, Inc., Peoples Super Liquor to Strike Affirmative Defense of Intervenor. (cz) [Entry date 07/28/92]
7/31/92	21	ORDER granting motion to intervene (signed by Magistrate Judge Jacob Hagopian) (cl)
7/31/92	22	MOTION by Kate F. Racine to Compel Discovery. (cz) [Entry date 08/04/92]
8/11/92	23	OBJECTION by RI Liquor Store to [20-1] motion to Strike Affirmative Defense of Intervenor. (cz) [Entry date 08/14/92]
8/12/92	24	MOTION by Kate F. Racine for Summary Judgment (cz) [Entry date 08/17/92]
8/12/92	25	AFFIDAVIT of Philip J. Cook, Ph.D Re: [24-1] motion for Summary Judgment (cz) [Entry date 08/17/92]
8/12/92	26	AFFIDAVIT of George H. Borts Re: [24-1] motion for Summary Judgment (cz) [Entry date 08/17/92]
8/12/92	27	AFFIDAVIT by Kate F. Racine Re: [24-1] motion for Summary Judgment (cz) [Entry date 08/17/92]
8/12/92	28	AFFIDAVIT of Henry Saffer Re: [24-1] motion for Summary Judgment (cz) [Entry date 08/17/92]
8/12/92	29	Defendant's Statement of Undisputed Facts in Support of Defendant's Motion for Summary Judgment. (cz) [Entry date 08/17/92]
8/12/92	30	MOTION by RI Liquor Store for Order Compelling Discovery. (cz) [Entry date 08/17/92]

DATE	No.	PROCEEDINGS
8/13/92	31	OBJECTION by 44 Liquormart, Inc. to [30-1] motion for Order Compelling Discovery. (cz) [Entry date 08/17/92]
8/17/92	32	MOTION by Kate F. Racine to Stay (cz)
8/20/92	—	Motion(s) referred: [22-1] motion to Compel Discovery. referred to Magistrate Judge Timothy M. Boudewyns, [20-1] motion to Strike Affirmative Defense of Intervenor. referred to Magistrate Judge Timothy M. Boudewyns (pd)
8/25/92	33	OBJECTION by 44 Liquormart, Inc. Peoples Super Liquor to [24-1] motion for Summary Judgment (cz)
8/25/92	33	MOTION by 44 Liquormart, Inc., Peoples Super Liquor for Summary Judgment (cz)
8/25/92	34	PLAINTIFFS' Statement of Genuine Issues of Fact in Support of Their Opposition to Defendant's Motion for Summary Judgment and Statement of Undisputed Facts in Support of Their Cross Motion for Summary Judgment. (cz)
8/25/92	35	AFFIDAVIT of Dr. Dadvid J. Pittman by 44 Liquormart, Inc., Peoples Super Liquor Re: [33-1] motion for Summary Judgment, [33-1] motion response (cz) [Edit date 08/25/92]
8/25/92	36	AFFIDAVIT Reginald G. Smart by 44 Liquormart, Inc., Peoples Super Liquor Re: [33-1] motion for Summary Judgment, [33-1] motion response (cz)
8/25/92	37	OBJECTION by 44 Liquormart, Inc., Peoples Super Liquor to [30-1] motion for Order Compelling Discovery. (cz)

DATE	No.	PROCEEDINGS
8/26/92	—	Status conference set at 11:00 9/8/92 before Mag. Judge Boudewyns on Deft, Racine's m/ for order compelling disc. and Pltf's m/ to strike aff. defense of intervenor. (jh)
9/4/92	—	Motion(s) referred: [30-1] motion for Order Compelling Discovery. referred to Magistrate Judge Timothy M. Boudewyns (pd)
9/4/92	—	Motion(s) referred: [33-1] motion for Summary Judgment referred to Judge Raymond J. Pettine, [32-1] motion to Stay referred to Judge Raymond J. Pettine (pd)
9/8/92	38	Minute entry: Hearing held before Mag. Judge Boudewyns. Deft, Racine's m/ for order compelling disc. is DENIED. Pltfs' m/ to strike affirmative defense of intervenor is DENIED. (jh) [Entry date 09/09/92]
9/8/92	39	ORDER denying [20-1] motion to Strike Affirmative Defense of Intervenor. (signed by Magistrate Judge Timothy M. Boudewyns) (jh) [Entry date 09/09/92]
9/8/92	40	ORDER denying [22-1] motion to Compel Discovery. (signed by Magistrate Judge Timothy M. Boudewyns) (jh) [Entry date 09/09/92]
9/11/92	41	ORDER granting [32-1] motion to Stay PTO pending resolution of the m/SJ. (signed by Judge Raymond J. Pettine) (pd)
9/14/92	—	Status conference set at 10:30 10/8/92 before Mag. Judge Boudewyns on M/ for order compelling discovery. (jh)
9/18/92	42	TRANSCRIPT of proceeding held on 7/14/92 before Mag. Judge Hagopian. (cz) [Entry date 09/21/92]

DATE	No.	PROCEEDINGS
9/23/92	—	Motion hearing re: [33-1] motion for Summary Judgment at 10:00 10/2/92, [24-1] motion for Summary Judgment at 10:00 10/2/92. Notice sent to all counsel of record (pd)
9/25/92	43	DEFT's rule 12 statement of undisputed facts in support of deft's obj. to m/SJ (pd) [Entry date 09/29/92]
9/29/92	44	OBJECTION by Kate F. Racine to [33-1] motion for Summary Judgment (cz) [Entry date 10/01/92]
10/2/92	—	Motion hearing re: [33-1] motion for Summary Judgment Motion hearing held, [24-1] motion for Summary Judgment Motion hearing held—Evan Lawson, Esq., Barry Kusinitz, Esq., Rebecca Partington, Esq., Robert Brady, Esq., William Gasbarro, Esq.—Counsel argue to the Court. It is decided that this matter be set for evidentiary hearing on 11/16/92 at 9:30 a.m. Mr. Lawson to prepare order. (cz)
10/2/92	45	Minute entry—Hearing held on 10/2/92. (cz)
10/8/92	46	Minute entry: Hearing held before Mag. Judge Boudewyns. Motion for order compelling discovery is denied. (jh)
10/8/92	47	ORDER denying [30-1] motion for Order Compelling Discovery. (signed by Magistrate Judge Timothy M. Boudewyns) (jh)
10/30/92	48	ORDER, reset Pretrial Memorandum Deadline to 11/9/92, and set Bench Trial for 11/16/92 (signed by Judge Raymond J. Pettine) (pd)
10/30/92	49	MOTION by 44 Liquormart, Inc., Peoples Super Liquor To Take Depositions by Video Tape. (cz) [Entry date 11/03/92]

DATE	No.	PROCEEDINGS
10/30/92	50	MOTION by 44 Liquormart, Inc., Peoples Super Liquor To Shorten Time to Respond to Plaintiff's Motion to Take Depositions by Video Tape. (cz) [Entry date 11/03/92]
11/2/92	51	MOTION by Kate F. Racine to Reopen Discovery (cz) [Entry date 11/03/92]
11/2/92	52	MOTION by Kate F. Racine to Continue Trial (cz) [Entry date 11/03/92]
11/2/92	54	OBJECTION by RI Liquor Store to [49-1] motion To Take Depositions by Video Tape. (cz) [Entry date 11/03/92]
11/2/92	55	MOTION by RI Liquor Store to Continue Trial (cz) [Entry date 11/03/92]
11/2/92	56	OBJECTION by RI Liquor Store to [50-1] motion To Shorten Time to Respond to Plaintiff's Motion to Take Depositions by Video Tape. (cz) [Entry date 11/03/92]
11/2/92	57	MOTION by RI Liquor Store to Compel Request for Production (cz) [Entry date 11/03/92]
11/3/92	53	OBJECTION by Kate F. Racine to [49-1] motion To Take Depositions by Video Tape. (cz)
11/3/92	58	Minute entry: Hearing held before mag. Judge Boudewyns. Intevenor's m/ for req. for prod. is passed for comp. Motion to shorten time to resp. to pltf's m/ to take depo by video tape is passed as moot. Motion to reopen disc. is partially granted. Intevenor's m/ to cont. is den. M/ for contin. is den. (cz) [Entry date 11/10/92]
11/3/92	59	ORDER mooting [57-1] motion to Compel Request for Production (signed by Magistrate Judge Timothy M. Boudewyns) (cz) [Entry date 11/10/92]

DATE	No.	PROCEEDINGS
11/3/92	60	ORDER mooting [50-1] motion To Shorten Time to Respond to Plaintiff's Motion to Take Depositions by Video Tape. (signed by Magistrate Judge Timothy M. Boudewyns) (cz) [Entry date 11/10/92]
11/3/92	61	ORDER granting in part [51-1] motion to Reopen Discovery (signed by Magistrate Judge Timothy M. Boudewyns) (cz) [Entry date 11/10/92]
11/3/92	62	ORDER denying [55-1] motion to Continue Trial (signed by Magistrate Judge Timothy M. Boudewyns) (cz) [Entry date 11/10/92]
11/3/92	63	ORDER denying [52-1] motion to Continue Trial (signed by Magistrate Judge Timothy M. Boudewyns) (cz) [Entry date 11/10/92]
11/5/92	64	ORDER (consolidated version of 11/3/92 orders (signed by Magistrate Judge Timothy M. Boudewyns) (cz) [Entry date 11/10/92]
11/16/92	65	Stipulation entered. (pd) [Entry date 11/18/92]
3/11/93	—	Evidentiary hearing held—Evan Lawson, Esq., Barry Kusinitz, Esq., Rebecca Partington, Esq., William Gasbarro, Esq. and Robert Brady, Esq. Plaintiff waives opening statement. W.1 Reginald George Smart (videotape depo.) Court indicates it would rather read deposition transcripts instead of watching videotape. Briefs due 3 weeks following receipt of transcript. Reply briefs due one week thereafter. Briefs are limited to 30 pgs. Intervenor to join in defendant's brief. Seven exhibits. (cz) [Entry date 03/12/93]
3/16/93	66	TRANSCRIPT of proceedings held on 3/11/93. (cz) [Entry date 03/23/93]

DATE	No.	PROCEEDINGS
3/19/93	—	CASE assigned to Judge Raymond J. Pettine. Assigned to Magistrate Judge Timothy M. Boudewyns (jh)
4/1/93	67	MOTION by RI Liquor Store to Enlarge Time to 4/20/93 to file trial brief. (cz) [Entry date 04/02/93]
4/2/93	68	ORDER granting [67-1] motion to Enlarge Time to 4/20/93 to file trial brief., set Brief deadline to 4/20/93 (signed by Judge Raymond J. Pettine) (pd)
8/10/93	69	MEMORANDUM & ORDER: The Ct. holds that SEc. 3-8-7 & 3-8-8.1 of the RIGL and Reg. 32 of the RI Liquor Control Administration do not directly advance the State's interest in reducing overall consumption of alcohol in RI & are more extensive than necessary to serve the State's interest. I find that the statutes impermissibly restrict commercial speech and are unconstitutional. (signed by Judge Raymond J. Pettine) (pd)
8/10/93	10	JUDGMENT for 44 Liquormart, Inc., Peoples Super Liquor against Kate F. Racine in accordance with the Memo & Order entered on 8/10/93. Docketed on 8/12/93. (signed by Judge Raymond J. Pettine) (pd) [Entry date 08/12/93]
8/10/93	—	Case closed (pd) [Entry date 08/12/93]
8/13/93	71	NOTICE OF APPEAL by RI Liquor Store. Appeal record due on 9/12/93 (jb)
8/13/93	—	Notice of appeal and certified copy of docket as well as copy of the Memo and order dated 8/10/93 to USCA: [71-1] appeal by RI Liquor Store (jb)
8/13/93	—	Appeal fee of $105.00 paid on receipt #34511. (jb) [Entry date 08/16/93]

DATE		PROCEEDINGS
8/13/93	72	MOTION by RI Liquor Store to Stay (jb) [Entry date 08/16/93]
8/18/93	75	NOTICE of Docketing ROA from USCA Re: [71-1] appeal USCA Number: 93-1893 (jb) [Entry date 08/20/93]
8/19/93	73	Transcript of an in chambers conference filed. (jb) [Entry date 08/20/93]
8/19/93	74	NOTICE OF APPEAL by Kate F. Racine. Fee Status: $105.00 paid on receipt #26664. Appeal record due on 9/18/93 (jb) [Entry date 08/20/93]
8/19/93	76	MOTION by Kate F. Racine to Stay (jb) [Entry date 08/20/93]
8/19/93	77	MOTION by Kate F. Racine for substitution of parties (jb) [Entry date 08/20/93]
8/20/93	—	Notice of appeal and certified copy of docket to USCA: [74-1] appeal by Kate F. Racine (jb)
8/20/93	78	ORDER denying [76-1] motion to Stay, denying [72-1] motion to Stay. (3 page order faxed to counsel on 8/20 and the order w/attachment mailed on 8/20/93). (signed by Judge Raymond J. Pettine) (pd)
8/23/93	79	CERTIFICATE of Clerk (jb)
8/23/93	—	Notice of appeal and certified copy of docket, original pleadings, exhibits and 4 video cassetts to USCA: [74-1] appeal by Kate F. Racine (jb)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 93-1893

44 LIQUORMART

v.

STATE OF RI, *et al.*

DOCKET ENTRIES

DATE	PROCEEDINGS
8/17/93	CIVIL case docketed. [91281-1] Notice filed by William P. Gasbarro for Appellant Rhode Island Liquor Stores Association, Robert M. Brady for Appellant Rhode Island Liquor Stores Association. Record on appeal due 8/27/93. (lina) [93-1893]
8/20/93	APPEARANCE filed by Attorney Evan T. Lawson on behalf of Plaintiffs Appellees 44 Liquormart. (lina) [93-1893]
8/23/93	APPEARANCE filed by Attorney William P. Gasbarro on behalf of Appellant Rhode Island Liquor Stores Association. (jant) [93-1893]
8/24/93	FEE PAID. Notice received from District Court that filing fee has been paid by the Appellant on 8/13/93. (eiln) [93-1893]
8/25/93	APPEARANCE filed by Attorney Robert M. Brady in 93-1893 on behalf of Appellant Rhode Island Liquor Stores Association in 93-1893. (paua) [93-1893]

DATE	PROCEEDINGS
8/30/93	RECORD ON APPEAL filed: 1 box of pleadings and exhibits. Appellant's Brief and Appendix Due 10/4/93. (lina) [93-1893]
8/31/93	APPEARANCE filed by Attorney Rebecca Tedford Partington in 93-1893 on behalf of Appellee Kate F. Racine in 93-1893. (lina) [93-1893]
9/7/93	MOTION by Kate F. Racine in 93-1893, Kate F. Racine in 93-1927 to consolidate for purposes of briefing and oral argument the following cases: 93-1893 and 93-1927 filed. Certificate of service dated 9/1/93. (lina) [93-1893 93-1927]
9/7/93	MEMORANDUM filed by Appellee Kate F. Racine in 93-1893 in support of motion to consolidate appeals 93-1893 and 93-1927. (lina) [93-1893]
9/7/93	ORDER: by Chief Judge Stephen G. Breyer ordering that the appeals 93-1893 and 93-1927 be consolidated. In 93-1893, 93-1927. (lina) [93-1893 93-1927]
10/1/93	MOTION filed for Appellant Rhode Island Liquor Stores Association in 93-1893, Appellant Kate F. Racine in 93-1927 requesting to extend time to file the respective briefs and appendices for Appellants' until 10/14/93. (lina) [93-1893 93-1927]
10/1/93	ORDER: by Judge Juan R. Torruella granting motion to extend time to file Appellants' respective briefs and appendices in 93-1893, 93-1927. Appellants' Appendices Now Due 10/14/93 in 93-1893, in 93-1927. Appellants' Briefs Now Due 10/14/93 for William P. Gasbarro in 93-1893, for Robert M. Brady in 93-1893, for Rebecca Tedford Partington in 93-1927. (lina) [93-1893 93-1927]
10/14/93	MOTION filed for Appellant Rhode Island Liquor Stores Association in 93-1893, Appellant Kate F. Racine in 93-1927 requesting to extend time to file Appellants respective briefs and appendices until 10/18/93. (lina) [93-1893 93-1927]

DATE	PROCEEDINGS
10/14/93	ORDER: by Judge Juan R. Torruella enlarging the time for Appellants' to file their respective briefs and appendices to and including October 18, 1993 in 93-1893, 93-1927. Appellants' Appendices Now Due 10/18/93 in 93-1893, in 93-1927. Appellants' Briefs Now Due 10/18/93 for William P. Gasbarro in 93-1893, for Robert M. Brady in 93-1893, for Rebecca Tedford Partington in 93-1927. (lina) [93-1893 93-1927]
10/14/93	ATTORNEY Lauren E. Jones for Appellant Rhode Island Liquor Stores Association in 93-1893, Attorney Lauren E. Jones for Appellant Kate F. Racine in 93-1927 added to case(s) [93-1893, 93-1927]. (lina) [93-1893 93-1927]
10/18/93	SUPPLEMENTAL RECORD consisting of pleading number 81 filed. (lina) [93-1893 93-1927]
10/20/93	APPELLANT'S BRIEF filed on behalf of Appellant Rhode Island Liquor Stores Association in 93-1893. Pages: 42, Copies: 10, delivered by mail. Certificate of service date 10/18/93. (bevy) [93-1893]
11/4/93	ATTORNEY Caroline C. Cornwell for Appellant Rhode Island Liquor Stores Association in 93-1893, Attorney Caroline C. Cornwell for Appellant State of Rhode Island in 93-1927 added to case(s) [93-1893, 93-1927]. (lina) [93-1893 93-1927]
11/4/93	APPEARANCE filed by Attorney Caroline C. Cornwell in 93-1893, Attorney Lauren E. Jones in 93-1893, Attorney Caroline C. Cornwell in 93-1927, Attorney Lauren E. Jones in 93-1927 on behalf of Appellant Rhode Island Liquor Stores Association in 93-1893, State of Rhode Island in 93-1927. (lina) [93-1893 93-1927]
11/24/93	BRIEF filed by Evan T. Lawson for Appellees 44 Liquormart in 93-1893, Evan T. Lawson for Ap-

pellees 44 Liquormart in 93-1927. Copies: 10. Certificate of service date 11/24/93. (lina) [93-1893 93-1927]

12/6/93 MOTION filed for Appellant Rhode Island Liquor Stores Association in 93-1893, Appellant State of Rhode Island in 93-1927 requesting to extend time to file Appellants reply brief until 12/21/93. (lina) [93-1893 93-1927]

12/6/93 ORDER: by Judge Norman H. Stahl enlarging the time for Appellants to file their reply brief to and including December 21, 1993. in 93-1893, 93-1927 (lina) [93-1893 93-1927]

12/20/93 MOTION filed for Appellant Rhode Island Liquor Stores Association in 93-1893, Appellant State of Rhode Island in 93-1927 requesting to extend time to file Appellants' reply brief until 1/5/94. (lina) [93-1893 93-1927]

12/20/93 ORDER: by Judge Norman H. Stahl enlarging the time for Appellants to file their reply brief to and including January 5, 1994 in 93-1893, 93-1927. (lina) [93-1893 93-1927]

12/28/93 APPELLANT'S REPLY BRIEF on behalf of Rhode Island Liquor Stores Association. Pages: 11. Copies: 10. Delivered by mail. Certificate of service date 12/21/93. (bevy) [93-1893 93-1927]

1/6/94 APPELLANT'S REPLY BRIEF on behalf of State of Rhode Island. Pages: 14. Copies: 10. Delivered by mail. Certificate of service date 1/5/94. (bevy) [93-1893 93-1927]

1/13/94 Assigned for hearing at the February, 1994 session. (ceca) [93-1893 93-1927]

1/18/94 MOTION filed for Appellant Rhode Island Liquor Stores Association in 93-1893, Appellant State of Rhode Island in 93-1927 requesting to change date of oral argument. (lina) [93-1893 93-1927]

DATE	PROCEEDINGS
1/18/94	ORDER: by Judge Conrad K. Cyr upon consideration of Appellants' motion to continue oral argument, ordering that said motion be denied. Appellant should have substitute counsel available to argue. in 93-1893, 93-1927 (lina) [93-1893 93-1927]
2/10/94	CASE ARGUED 02/10/94. Cyr, Aldrich, Stahl, JJ. (ceca) [93-1893 93-1927]
5/2/94	JUDGMENT: Terminated on the Merits after Oral Hearing; The judgment of the District Court is reversed in part and affirmed in part in accordance with the opinion issued this date. No costs.; Written, Signed, Published. Judge Bailey Aldrich, Authoring Judge; Judge Conrad K. Cyr; Judge Norman H. Stahl. (lina) [93-1893 93-1927]
5/16/94	Petition by State of Rhode Island in 93-1893, State of Rhode Island in 93-1927 for rehearing and suggestion for rehearing in banc filed. Certification of counsel pursuant to the Rules of the United States Court of Appeals for the First Circuit Rule 35 and 35.1 filed. Certificate of service dated 5/13/94. (lina) [93-1893 93-1927]
5/16/94	Petition by Rhode Island Liquor Stores Association in 93-1893 and in 93-1927 for rehearing and suggestion for rehearing in banc filed. Certificate of service dated 5/16/94. (lina) [93-1893 93-1927]
5/16/94	Petition by 44 Liquormart in 93-1893, 44 Liquormart in 93-1927 for rehearing and suggestion for rehearing en banc, filed. Certificate of service dated 5/16/94. (lina) [93-1893 93-1927]
7/8/94	ORDER: by Judge Bailey Aldrich, Judge Juan R. Torruella, Judge Bruce M. Selya, Judge Conrad K. Cyr, Judge Michael Boudin, Judge Norman H. Stahl denying the petitions for rehearing and the suggestions for rehearing en banc in 93-1893 and 93-1927. Chief Judge Stephen Breyer did not participate. (lina) [93-1893 93-1927]

DATE	PROCEEDINGS
7/8/94	ORDER: by Judge Conrad K. Cyr, Judge Bailey Aldrich, Judge Norman H. Stahl to vacate judgment of Court of Appeals entered on May 2, 1994. The panel opinion having been withdrawn in accordance with the judgment issued this date, ordering that either party may file a petition for rehearing with a suggestion for rehearing en banc by July 22, 1994. (lina) [93-1893 93-1927]
7/8/94	JUDGMENT: The judgment of this Court of May 2, 1994 is vacated and the opinion of that date is withdrawn. Affirmed (in part) and Reversed (in part); No costs. Written, Signed, Unpublished. Judge Bailey Aldrich, Authoring Judge; Judge Conrad K. Cyr; Judge Norman H. Stahl. (lina) [93-1893 93-1927]
7/20/94	Petition for Appellee 44 Liquormart Inc. for rehearing and suggestion for rehearing en banc in 93-1893 and in 93-1927 filed. Certificate of service dated 7/20/94. (lina) [93-1893 93-1927]
7/22/94	Petition by Rhode Island Liquor Stores Association in 93-1893, Rhode Island Iiquor Stores Association in 93-1927 for rehearing before original filed. Certificate of service dated 7/21/94. (lina) [93-1893 93-1927]
7/22/94	Petition by Rhode Island Liquor Stores Association in 93-1893 and in 93-1927 for rehearing in banc filed. Certificate of service dated 7/21/94. (lina) [93-1893 93-1927]
7/22/94	Memorandum in support of petition for rehearing and suggestion for rehearing in banc filed by Rhode Island Liquor Store Association. (lina) [93-1893]
7/22/94	ATTORNEY Alan M. Shoer for Appellee State of Rhode Island in 93-1893 and in 93-1927 added to case(s) [93-1893, 93-1927]. (lina) [93-1893 93-1927]

DATE	PROCEEDINGS
7/22/94	Petition by State of Rhode Island in 93-1893, State of Rhode Island in 93-1927 for rehearing and suggestion for rehearing in banc, filed. Certificate of service dated 7/21/94. (lina) [93-1893 93-1927]
7/29/94	ORDER: by Judge Bailey Aldrich, Judge Juan R. Torruella, Judge Bruce M. Selya, Judge Conrad K. Cyr, Judge Michael Boudin, Judge Norman H. Stahl. Denying the request of 44 Liquormart, Inc. for a panel rehearing and rehearing en banc. in 93-1893, 93-1927 (dona) [93-1893 93-1927]
10/24/94	ORDER: by Judge Conrad K. Cyr, Judge Bailey Aldrich, Judge Norman H. Stahl the petition for rehearing filed by Rhode Island Liquor Stores Association and the petition for rehearing by the State of Rhode Island are granted. The opinion of this Court of July 8, 1994 is withdrawn and this Court's judgment of July 8, 1994 is vacated. A new opinion and judgment will issue this date in 93-1893, 93-1927. (lina) [93-1893 93-1927]
10/24/94	JUDGMENT: Terminated on the Merits after Submission Without Oral Hearing; Reversed; Costs to Defendants; Written, Signed, Published. Judge Bailey Aldrich, Authoring Judge; Judge Conrad K. Cyr; Judge Norman H. Stahl. (lina) [93-1893 93-1927]
11/15/94	TAXATION of costs filed. (lina) [93-1893 93-1927]
11/15/94	MANDATE ISSUED. (lina) [93-1893 93-1927]
11/15/94	RECORD returned. (lina) [93-1893]
1/9/95	U.S. SUPREME COURT NOTICE filed regarding petition for writ of certiorari. Filed in the Supreme Court on 12/27/94. Supreme Court case number: 94-1140. (lina) [93-1893]
1/13/95	Opinion can be found in Federal Reporter 39 F.3d 5 (bevy) [93-1893]

DATE	PROCEEDINGS
5/4/95	U.S. SUPREME COURT ORDER granting petition for writ of certiorari limited to the following question: "Whether Rhode Island may, consistent with the First Amendment, prohibit truthful, non-misleading price advertising regarding alcoholic beverages?" filed in the Supreme Court on 5/01/95. (lina) [93-1893]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 93-1927

44 LIQUORMART

v.

STATE OF RI, *et al.*

DOCKET ENTRIES

DATE	PROCEEDINGS
8/25/93	CIVIL case docketed. [92267-1] Notice filed by Rebecca Tedford Partington for Appellant Kate F. Racine. Record on appeal due 9/7/93. (dona) [93-1927]
8/30/93	RECORD ON APPEAL filed: 1 box of pleadings and exhibits. Appellant's Brief and Appendix Due 10/4/93. (lina) [93-1927]
8/30/93	APPEARANCE filed by Attorney William P. Gasbarro in 93-1927 on behalf of Rhode Island Liquor Stores, Association. (lina) [93-1927]
8/31/93	APPEARANCE filed by Attorney Evan T. Lawson in 93-1927 on behalf of Plaintiff in 93-1927. (lina) [93-1927]
9/7/93	APPEARANCE filed by Attorney Rebecca Tedford Partington in 93-1927 on behalf of Appellant Kate F. Racine in 93-1927. (lina) [93-1927]

DATE	PROCEEDINGS
9/7/93	MOTION by Kate F. Racine in 93-1893, Kate F. Racine in 93-1927 to consolidate for purposes of briefing and oral argument the following cases: 93-1893 and 93-1927 filed. Certificate of service dated 9/1/93. (lina) [93-1893 93-1927]
9/7/93	MEMORANDUM filed by Appellant Kate F. Racine in support of motion to consolidate appeals 93-1893 and 93-1927. (lina) [93-1927]
9/7/93	ORDER: by Chief Judge Stephen B. Breyer ordering that the appeals 93-1893 and 93-1927 be consolidated. in 93-1893, 93-1927 (lina) [93-1893 93-1927]
9/8/93	APPEARANCE filed by Attorney Robert M. Brady in 93-1927 on behalf of Rhode Island Liquor Store Assoc. (lina) [93-1927]
10/1/93	MOTION filed for Appellant Rhode Island Liquor Stores Association in 93-1893, Appellant Kate F. Racine in 93-1927 requesting to extend time to file the respective briefs and appendices for Appellants' until 10/14/93. (lina) [93-1893 93-1927]
10/1/93	ORDER: by Judge Juan R. Torruella granting motion to extend time to file Appellants' respective briefs and appendices in 93-1893, 93-1927. Appellants' Appendices Now Due 10/14/93 in 93-1893, in 93-1927. Appellants' Briefs Now Due 10/14/93 for William P. Gasbarro in 93-1893, for Robert M. Brady in 93-1893, for Rebecca Tedford Partington in 93-1927. (lina) [93-1893 93-1927]
10/14/93	MOTION filed for Appellant Rhode Island Liquor Stores Association in 93-1893, Appellant Kate F. Racine in 93-1927 requesting to extend time to file Appellants respective briefs and appendices until 10/18/93. (lina) [93-1893 93-1927]
10/14/93	ORDER: by Judge Juan R. Torruella enlarging the time for Appellants' to file their respective

DATE	PROCEEDINGS
	briefs and appendices to and including October 18, 1993 in 93-1893, 93-1927. Appellants' Appendices Now Due 10/18/93 in 93-1893, in 93-1927. Appellants' Briefs Now Due 10/18/93 for William P. Gasbarro in 93-1893, for Robert M. Brady in 93-1893, for Rebecca Tedford Partington in 93-1927. (lina) [93-1893 93-1927]
10/14/93	ATTORNEY Lauren E. Jones for Appellant Rhode Island Liquor Stores Association in 93-1893, Attorney Lauren E. Jones for Appellant Kate F. Racine in 93-1927 added to case(s) [93-1893, 93-1927]. (lina) [93-1893 93-1927]
10/18/93	APPELLANT'S BRIEF and 2 volumes of APPENDIX filed on behalf of Kate F. Racine in 93-1927. Pages: 50, Copies: 10, delivered by mail. Certificate of service date 10/13/93. (bevy) [93-1927]
10/18/93	SUPPLEMENTAL RECORD consisting of pleading number 81 filed. (lina) [93-1893 93-1927]
11/4/93	ATTORNEY Carolina C. Cornwell for Appellant Rhode Island Liquor Stores Association in 93-1893, Attorney Carolina C. Cornwell for Appellant State of Rhode Island in 93-1927 added to case(s) [93-1893, 93-1927]. (lina) [93-1893 93-1927]
11/4/93	APPEARANCE filed by Attorney Carolina C. Cornwell in 93-1893, Attorney Lauren E. Jones in 93-1893, Attorney Caroline C. Cornwell in 93-1927, Attorney Lauren E. Jones in 93-1927 on behalf of Appellant Rhode Island Liquor Stores Association in 93-1893, State of Rhode Island in 93-1927. (lina) [93-1893 93-1927]
11/24/93	BRIEF filed by Evan T. Lawson for Appellees 44 Liquormart in 93-1893, Evan T. Lawson for Appellees 44 Liquormart in 93-1927. Copies: 10. Certificate of service date 11/24/93. (lina) [93-1893 93-1927]

DATE	PROCEEDINGS
12/6/93	MOTION filed for Appellant Rhode Island Liquor Stores Association in 93-1893, Appellant State of Rhode Island in 93-1927 requesting to extend time to file Appellants reply brief until 12/21/93. (lina) [93-1893 93-1927]
12/6/93	ORDER: by Judge Norman H. Stahl enlarging the time for Appellants to file their reply brief to and including December 21, 1993. in 93-1893, 93-1927 (lina) [93-1893 93-1927]
12/20/93	MOTION filed for Appellant Rhode Island Liquor Stores Association in 93-1893, Appellant State of Rhode Island in 93-1927 requesting to extend time to file Appellants' reply brief until 1/5/94. (lina) [93-1893 93-1927]
12/20/93	ORDER: by Judge Norman H. Stahl enlarging the time for Appellants to file their reply brief to and including January 5, 1994 in 93-1893, 93-1927. (lina) [93-1893 93-1927]
12/28/93	APPELLANT'S REPLY BRIEF on behalf of Rhode Island Liquor Stores Association. Pages: 11. Copies: 10. Delivered by mail. Certificate of service date 12/21/93. (bevy) [93-1893 93-1927]
1/6/94	APPELLANT'S REPLY BRIEF on behalf of State of Rhode Island. Pages: 14. Copies: 10. Delivered by mail. Certificate of service date 1/5/94. (bevy) [93-1893 93-1927]
1/13/94	Assigned for hearing at the February, 1994 session. (ceca) [93-1893 93-1927]
1/18/94	MOTION filed for Appellant Rhode Island Liquor Stores Association in 93-1893, Appellant State of Rhode Island in 93-1927 requesting to change date of oral argument. (lina) [93-1893 93-1927]
1/18/94	ORDER: by Judge Conrad K. Cyr upon consideration of Appellants' motion to continue oral argu-

DATE	PROCEEDINGS
	ment, ordering that said motion be denied. Appellant should have substitute counsel available to argue. in 93-1893, 93-1927 (lina) [93-1893 93-1927]
2/10/94	CASE ARGUED 02/10/94. Cyr, Aldrich, Stahl, JJ. (ceca) [93-1893 93-1927]
5/2/94	JUDGMENT: Terminated on the Merits after Oral Hearing; The judgment of the District Court is reversed in part and armed in part in accordance with the opinion issued this date. No costs.; Written, Signed, Published, Judge Bailey Aldrich, Authoring Judge; Judge Conrad K. Cyr; Judge Norman H. Stahl. (lina) [93-1893 93-1927]
5/16/94	Petition by State of Rhode Island in 93-1893, State of Rhode Island in 93-1927 for rehearing and suggestion for rehearing in banc filed. Certification of counsel pursuant to the Rules of the United States Court of Appeals for the First Circuit Rule 35 and 35.1 filed. Certificate of service dated 5/13/94. (lina) [93-1893 93-1927]
5/16/94	Petition by Rhode Island Liquor Stores Association in 93-1893 and in 93-1927 for rehearing and suggestion for rehearing in banc filed. Certificate of Service dated 5/16/94. (lina) [93-1893 93-1927]
5/16/94	Petition by 44 Liquormart in 93-1893, 44 Liquormart in 93-1927 for rehearing and suggestion for rehearing en banc, filed. Certificate of service dated 5/16/94. (lina) [93-1893 93-1927]
7/8/94	ORDER: by Judge Bailey Aldrich, Judge Juan R. Torruella, Judge Bruce M. Selya, Judge Conrad K. Cyr, Judge Michael Boudin, Judge Norman H. Stahl denying the petitions for rehearing and the suggestions for rehearing en banc in 93-1893 and 93-1927. Chief Judge Stephen Breyer did not participate. (lina) [93-1893 93-1927]

DATE	PROCEEDINGS
7/8/94	ORDER: by Judge Conrad K. Cyr, Judge Bailey Aldrich, Judge Norman H. Stahl the panel opinion having been withdrawn in accordance with the judgment issued today, and the amended panel opinion having been substituted, ordering that either party may file a petition for rehearing with a suggestion for rehearing en banc by July 22, 1994 in 93-1893, 93-1927. in 93-1893, 93-1927 (lina) [93-1927]
7/8/94	ORDER: by Judge Conrad K. Cyr, Judge Bailey Aldrich, Judge Norman H. Stahl to vacate judgment of Court of Appeals entered on May 2, 1994. The panel opinion having been withdrawn in accordance with the judgment issued this date, ordering that either party may file a petition for rehearing with a suggestion for rehearing en banc by July 22, 1994. (lina) [93-1893 93-1927]
7/8/94	JUDGMENT: The judgment of this Court of May 2, 1994 is vacated and the opinion of that date is withdrawn. Affirmed (in part) and Reversed (in part); No costs. Written, Signed, Unpublished. Judge Bailey Aldrich, Authoring Judge; Judge Conrad K. Cyr; Judge Norman H. Stahl. (lina) [93-1893 93-1927]
7/20/94	Petition for Appellee 44 Liquormart Inc. for rehearing and suggestion for rehearing en banc in 93-1893 and in 93-1927 filed. Certificate of service dated 7/20/94. (lina) [93-1893 93-1927]
7/22/94	Petition by Rhode Island Liquor Stores Association in 93-1893, Rhode Island Liquor Stores Association in 93-1927 for rehearing before original filed. Certificate of service dated 7/21/94. (lina) [93-1893 93-1927]
7/22/94	Petition by Rhode Island Liquor Stores Association in 93-1893 and in 93-1927 for rehearing in banc

DATE	PROCEEDINGS
	filed. Certificate of service dated 7/21/94. (lina) [93-1893 93-1927]
7/22/94	Memorandum in support of petition for rehearing and suggestion for rehearing in banc filed by Rhode Island Liquor Store Association. (lina) [93-1927]
7/22/94	ATTORNEY Alan M. Shoer for Appellee State of Rhode Island in 93-1893 and in 93-1927 added to case(s) [93-1893, 93-1927]. (lina) [93-1893 93-1927]
7/22/94	Petition by State of Rhode Island in 93-1893, State of Rhode Island in 93-1927 for rehearing and suggestion for rehearing in banc, filed. Certificate of service dated 7/21/94. (lina) [93-1893 93-1927]
7/29/94	ORDER: by Judge Bailey Aldrich, Judge Juan R. Torruella, Judge Bruce M. Selya, Judge Conrad K. Cyr, Judge Michael Boudin, Judge Norman H. Stahl. Denying the request of 44 Liquormart, Inc. for a panel rehearing and rehearing en banc. in 93-1893, 93-1927 (dona) [93-1893 93-1927]
10/24/94	ORDER: by Judge Conrad K. Cyr, Judge Bailey Aldrich, Judge Norman H. Stahl the petition for rehearing filed by Rhode Island Liquor Stores Association and the petition for rehearing by the State of Rhode Island are granted. The opinion of this Court of July 8, 1994 is withdrawn and this Court's judgment of July 8, 1994 is vacted. A new opinion and judgment will issue this date in 93-1893, 93-1927. (lina) [93-1893 93-1927]
10/24/94	JUDGMENT: Terminated on the Merits after Submission Without Oral Hearing; Reversed; Costs to Defendants; Written, Signed, Published. Judge Bailey Aldrich, Authoring Judge; Judge Conrad K. Cyr; Judge Norman H. Stahl. (lina) [93-1893 93-1927]

DATE	PROCEEDINGS
11/15/94	TAXATION of costs filed. (lina) [93-1893 93-1927]
11/15/94	MANDATE ISSUED. (lina) [93-1893 93-1927]
11/15/94	RECORD returned. (lina) [93-1927]
1/9/95	U.S. SUPREME COURT NOTICE filed regarding petition for writ of certiorari. Filed in the Supreme Court on 12/27/94. Supreme Court case number: 94-1140. (lina) [93-1927]
1/13/95	Opinion can be found in Federal Reporter 39 F. 3d 5 (bevy) [93-1927]
5/4/95	U.S. SUPREME COURT ORDER granting petition for writ of certiorari limited to the following question: "Whether Rhode Island may, consistent with the First Amendment, prohibit truthful, nonmisleading price advertising regarding alcoholic beverages?" filed in the Supreme Court on 05/01/95. (lina) [93-1927]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 92-0115
JURY TRIAL DEMANDED

44 LIQUORMART, INC. and
PEOPLES SUPER LIQUOR STORES, INC.,
Plaintiffs,

v.

KATE F. RACINE, In Her Capacity As Rhode Island
Liquor Control Administrator,
Defendant.

COMPLAINT

Parties

1. Plaintiff, 44 Liquormart, Inc. (hereinafter "44 Liquormart"), is a Rhode Island corporation with a principal place of business at 39 Putnam Pike, Johnston, RI. Plaintiff, 44 Liquormart, is engaged in the lawful sale of alcoholic beverages at retail for consumption off the licensed premises.

2. Plaintiff, Peoples Super Liquor Stores, Inc. (hereinafter "Peoples Super Liquor"), is a Massachusetts corporation with principal places of business in Massachusetts at 446 Dartmouth Street, New Bedford, MA; 139 Hathaway Road, New Bedford, MA; and 153 Huttleston Avenue, Fairhaven, MA. Plaintiff, Peoples Super Liquor, is engaged in the lawful sale of alcoholic beverages at retail for consumption off the licensed premises.

3. Defendant, Kate F. Racine (hereinafter "Racine"), is the Liquor Control Administrator for the State of

Rhode Island, with an official address at 235 Richmond Street, Providence, RI.

Jurisdiction

4. This Court has federal subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, because the issues presented pose (a) a federal question concerning the constitutionality of two Rhode island statutes, General Laws 1956 (1976 Reenactment) §§ 3-8-7 and 3-8-8.1 (hereinafter "R.I.G.L. § 3-8-7 and R.I.G.L. §3-8-8.1"), and Rhode Island Liquor Control Administration Rule and Regulation 32, (hereinafter "Regulation 32") under the First and Fourteenth Amendments and the commerce clause; (b) a federal question concerning the validity of R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 under the Sherman Anti-Trust Act, 15 U.S.C. §§ 1-7; and (c) a federal question concerning the validity of R.I.G.L §§ 3-8-7 and 3-8-8.1 and Regulation 32 under 42 U.S.C. § 1983.

Allegations Common To All Counts

5. James H. Spevock (hereinafter "Spevock"), the President of plaintiff, 44 Liquormart, is the holder of a class-A liquor license in the State of Rhode Island.

6. On several occasions, beginning in the summer of 1991, while Spevock was going through hearings in the town of Johnston, Rhode Island to procure his class-A liquor license, and continuing into early 1992, Spevock had contact with defendant, Racine, and stated to her that he wished to be informed about the statutes, rules and regulations applicable to retail alcoholic beverage retailers in Rhode Island. During these conversations, defendant, Racine, advised Spevock that his newly-procured license would be suspended and possibly revoked, pursuant to R.I.G.L. § 3-8-7 and Regulation 32, if he were to advertise the prices of alcoholic beverages in any publications or through the radio or television media. De-

fendant, Racine, further advised Spevock that no media outlet with a principal place of business in Rhode Island would be allowed, pursuant to R.I.G.L. § 3-8-8.1, to accept, publish or broadcast such retail alcoholic beverage price advertisements. As grounds for the restrictions imposed by R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32, defendant, Racine, cited the alleged governmental interests in promoting temperance and the reasonable control of traffic in alcoholic beverages, as stated in R.I.G.L. § 3-1-5.

7. In December of 1991 a hearing was held by defendant Racine, presiding as Liquor Control Administrator, to determine whether plaintiff, 44 Liquormart, had violated R.I.G.L. § 3-8-7 and Regulation 32 by having the word "WOW" published in place of a price in an advertisement plaintiff, 44 Liquormart, had placed in a December 1991 edition of the Providence Journal, a daily newspaper published and circulated in Rhode Island. At the conclusion of the hearing, defendant, Racine, determined that a violation had, indeed, occurred, fined plaintiff, 44 Liquormart, $400.00, and ordered that the advertisement, as printed, cease to run. On December 17, 1991, plaintiff, 44 Liquormart, paid the fine.

8. On several occasions in 1991 and 1992, representatives of Peoples Super Liquor also had contact with defendant, Racine, and advised her of their desire to have plaintiff, Peoples Super Liquor, advertise its alcoholic beverage prices in newspapers and through radio and television outlets with principal places in business in Rhode Island. Defendant, Racine, advised the representatives of plaintiff, Peoples Super Liquor, that this would be impossible, because R.I.G.L. § 3-8-8.1 expressly prohibits the Rhode Island media from advertising retail alcoholic beverage pricing information. Defendant, Racine, again cited the alleged governmental interests in promoting temperance and reasonable control of traffic in alcoholic beverages as grounds for the restrictions imposed by the statutes and regulation.

COUNT ONE

Violation Of First Amendment Rights

9. The allegations contained in paragraphs 1-8 are repeated and incorporated as if fully set forth herein.

10. R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 violate plaintiffs', 44 Liquormart's and Peoples Super Liquor's, right to free speech guaranteed under the First Amendment to the United States Constitution, as applied to the states under the Fourteenth Amendment. By denying plaintiffs, 44 Liquormart and Peoples Super Liquor, the ability to advertise their retail alcoholic beverage prices, R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 have denied plaintiffs, 44 Liquormart and Peoples Super Liquor, the protected right to engage in free speech which would enhance their lawful and legitimate business and commercial interests, and such free speech would not be misleading to the public.

11. R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 do not advance the alleged governmental interest in temperance and reasonable control of traffic in alcoholic beverages asserted by defendant, Racine. In fact, there is no statistical evidence to either show that banning the publication of retail alcoholic beverage prices in any way promotes or results in public temperance, or that the traffic in alcoholic beverages is affected in any way by the publication or broadcast of price information.

12. R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 are more extensive than necessary to advance the alleged governmental interests, enunciated through defendant, Racine, of promotion of temperance and reasonable control of traffic in alcoholic beverages. Even assuming that the enunciated governmental interests are legitimate, less restrictive means can and should be used to achieve the desired results.

13. Plaintiffs, 44 Liquormart and Peoples Super Liquor, have suffered economic harm in the form of lost business opportunity and incurred monetary damages as a result of being denied their right, under the auspices of R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32, to engage in protected free speech.

14. WHEREFORE, plaintiffs, 44 Liquormart and Peoples Super Liquor, respectfully request that this Court:

(a) Enter a judgment declaring R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 invalid because they violate the First Amendment to the United States Constitution; and

(b) Provide such other and further relief as this Court deems appropriate.

COUNT TWO

Violation Of Fourteenth Amendment Rights

15. The allegations contained in paragraphs 1-13 are repeated and incorporated as if fully set forth herein.

16. R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32, both on their face and as applied, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution because they deny plaintiffs, 44 Liquormart and Peoples Super Liquor, an equal opportunity to advertise retail alcoholic beverage prices within media outlets with principal places of business in the State of Rhode Island. In addition, R.I.G.L. § 3-8-7 denies plaintiff, 44 Liquormart, a Rhode Island alcoholic beverage retailer, an equal opportunity to advertise alcoholic beverage prices in publications or broadcast media based outside the State of Rhode Island. The unequal effect of R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 is further illustrated and underscored by the fact that retailers who are not licensed by the State of Rhode Island may advertise their alcoholic beverage prices in media outlets

which maintain principal places of business outside the State of Rhode Island. These out-of-state advertisements may then be disseminated within the State of Rhode Island, thereby giving unfair advantage to the out-of-state competitors of Rhode Island retail alcoholic beverage sellers. R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 thus (a) make all retailers a class which is discriminated against by virtue of their desire to advertise their lawful alcoholic beverage prices and (b) make the Rhode Island retailers a class which is discriminated against by virtue of the state in which they have chosen to be licensed.

17. There is no rational basis for the wording and application of R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32. The goals of these statutes and regulation, articulated by defendant, Racine, as the promotion of temperance and reasonable control of traffic in alcoholic beverages, are not sufficient to justify the denial of equal protection to Rhode Island alcoholic beverage retailers like plaintiffs, 44 Liquormart and Peoples Super Liquor.

18. Plaintiffs, 44 Liquormart and Peoples Super Liquor, have suffered economic harm in the form of lost business opportunity and incurred monetary damages as a result of being denied their right, under the auspices of R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32, to equal protection under the laws.

19. WHEREFORE, plaintiffs, 44 Liquormart and Peoples Super Liquor, respectfully requests that this Court:

(a) Enter a judgment declaring that R,I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 invalid because they violate the Fourteenth Amendment to the United States Constitution; and

(b) Provide such other and further relief as this Court deems appropriate.

COUNT THREE

Violation of the Commerce Clause

20. The allegation contained in paragraphs 1-13 and 15-18 are repeated and incorporated as if fully set forth herein.

21. R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 violate Article 1, § 8 of the United States Constitution, the commerce clause, because they stifle competition between alcoholic beverage retailers inside and outside of Rhode Island. Under the prevailing Rhode Island statutory scheme, retailers licensed in Rhode Island are prevented from fully engaging in interstate commerce with each other and with retailers in other states.

22. Plaintiffs, 44 Liquormart and Peoples Super Liquor, have suffered economic harm in the form of lost business opportuinty and incurred monetary damage as a result of being denied their right, under the auspicies of R.I.G.L. §§ 3-8-7 and 3.8.8.1 and Regulation 32, to engage in interstate commerce.

23. WHEREFORE, plaintiffs, 44 Liquormart and Peoples Super Liquor, respectfully request that this Court:

(a) Enter a judgment declaring that R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 are invalid because they violate Article 1 § 8 of the United States Constitution, the commerce clause; and

(b) Provide such other and further relief as this Court deems appropriate.

COUNT FOUR

Violation of The Sherman Anti-Trust Act

24. The allegations contained in paragraphs 1-13, 15-18 and 20-22 are repeated and incorporated as if fully set forth herein.

25. R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 violate the Sherman Anti-Trust Act, 15 U.S.C. §§ 1-7, because they stifle competition between retailers inside and outside of Rhode Island. Under the prevailing Rhode Island statutory scheme, retailers, like the plaintiffs, 44 Liquormart and Peoples Super Liquors, are prevented from engaging in legitimate, meaningful or concrete price competition with both other Rhode Island retailers, and with retailers from other states. Enactment of statutes and regulations like R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 does not, in and of itself, constitute implementation of a regulatory scheme sufficient to remove these statutes and regulations from the proscriptions of the Sherman Anti-Trust Act. Furthermore, the state of Rhode Island has not actively or sufficiently supervised this alleged regulatory scheme, as retailers from neighboring states may freely advertise their pricing information in publications and broadcast facilities just outside of Rhode Island's borders and then disseminate such information inside Rhode Island. The net result is to allow unfair advantage and competition among non-Rhode Island retailers inside Rhode Island, which behavior violates the Sherman Anti-Trust Act.

26. Plaintiffs, 44 Liquormart and Peoples Super Liquors, have suffered economic harm in the form of lost business opportunity and incurred monetary damages as a result of being denied the protections of the Sherman Anti-Trust Act with respect to R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32.

27. WHEREFORE, plaintiffs, 44 Liquormart and Peoples Super Liquor, respectfully requests that this Court:

> (a) Enter a judgment declaring that R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 are invalid because they violate 15 U.S.C. §§ 1-7, the Sherman Anti-Trust Act; and

(b) Provide such other and further relief as this Court deems appropriate.

COUNT FIVE

Violation Of 42 U.S.C. § 1983

28. The allegations contained in paragraphs 1-13, 15-18, 20-22 and 24-26 are repeated and incorporated as if fully set forth herein.

29. Defendant, Racine's, enforcement of R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 against plaintiffs, 44 Liquormart and Peoples Super Liquor, violates 42 U.S.C. § 1983, because such enforcement deprives plaintiffs, 44 Liquormart and Peoples Super Liquor, of their rights under Article 1 § 8, the commerce clause, and the First and Fourteenth Amendments to the United States Constitution, and further denies plaintiffs, 44 Liquormart and Peoples Super Liquor, of the protections afforded them under the Sherman Anti-Trust Act, 15 U.S.C. §§ 1-7.

30. Plaintiffs, 44 Liquormart and Peoples Super Liquor, have suffered economic harm in the form of lost business opportunity and incurred monetary damages as result of defendant, Racine's, enforcement of R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 against them in contravention of their rights under the United States Constitution and the Sherman Anti-Trust Act, 15 U.S.C. §§ 1-7.

31. WHEREFORE, plaintiffs, 44 Liquormart and Peoples Super Liquor, respectfully request that this Court:

(a) Enter a judgment declaring that R.I.G.L. §§ 3-8-7 and 3-8-8.1 and Regulation 32 are invalid because they violate 42 U.S.C. § 1983; and

(b) Provide such other and further relief as this Court deems appropriate.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

44 LIQUORMART, INC. and
PEOPLES SUPER LIQUOR STORES, INC.,

Plaintiffs,

By Their Attorneys,

/s/ Barry J. Kusinitz
BARRY J. KUSINITZ
CORRENTE, BRILL & KUSINITZ
20 Westminister Street
Providence, RI 02903
(401) 751-7777
RI Bar No. 1404

And

/s/ Betsy G. Roberti
EVAN T. LAWSON
BETSY G. ROBERTI
LAWSON & WEITZEN
425 Summer Street
Boston, MA 02110
(617) 439-4990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C.A. No. 92-0115/P

44 LIQUOR MART, INC. and
PEOPLE'S SUPER LIQUOR STORES, INC.

v.

KATE F. RACINE, in her capacity as Rhode Island
Liquor Control Administrator

ANSWER

1. Defendant is without sufficient knowledge or belief to respond to the averments contained in paragraph 1 of plantiffs' complaint and would therefore leave plaintiffs to their proof.

2. Defendant is without sufficient knowledge or belief to respond to the averments contained in paragraph 2 of plaintiffs' complaint and would therefore leave plaintiffs to their proof.

3. The allegations contained in paragraph 3 of plaintiffs' complaint are admitted, with the correction of defendant's address, which is 233 Richmond Street.

4. Paragraph 4 of plaintiffs' complaint contains legal conclusions to which no response is required. If an answer to these allegations is deemed necessary, they are denied, and defendant would leave plaintiffs to their proof.

5. The allegations contained in paragraph 5 of plaintiffs' complaint are admitted.

6. Defendant admits to communications with James H. Spevock after August, 1991. Defendant would require plaintiffs to prove the remaining allegations of paragraph 6 of their Complaint.

7. The allegations contained in paragraph 7 of plaintiffs' complaint are admitted.

8. The allegations contained in paragraph 8 of plaintiffs' complaint are denied.

COUNT ONE

9. Defendant's responses to the allegations contained in paragraphs 1 through 8 above are realleged and incorporated as if fully set forth herein.

10. The allegations contained in paragraph 10 of plaintiffs' complaint are denied.

11. The allegations contained in paragraph 11 of plaintiffs' complaint are denied.

12. The allegations contained in paragraph 12 of plaintiffs' complaint are denied.

13. The allegations contained in paragraph 13 of plaintiffs' complaint are denied.

14. Defendant denies that plaintiffs are entitled to any relief whatsoever from this Court.

WHEREFORE, Defendant respectfully requests that this Court dismiss plaintiffs' complaint and award it fees and costs herein.

COUNT TWO

15. Defendant's responses to the allegations contained in paragraphs 1 through 14 above are realleged and incorporated as if fully set forth herein.

16. The allegations contained in paragraph 16 of plaintiffs' complaint are denied.

17. The allegations contained in paragraph 17 of plaintiffs' complaint are denied.

18. The allegations contained in paragraph 18 of plaintiffs' complaint are denied.

19. Defendant denies that plaintiffs are entitled to any relief whatsoever from this Court.

WHEREFORE, Defendant respectfully requests that this Court dismiss plaintiffs' complaint and award it fees and costs herein.

COUNT THREE

20. Defendant's responses to the allegations contained in paragraphs 1 through 19 above are realleged and incorporated as if fully set forth herein.

21. The allegations contained in paragraph 21 of plaintiffs' complaint are denied.

22. The allegations contained in paragraph 22 of plaintiffs' complaint are denied.

23. Defendant denies that plaintiffs are entitled to any relief whatsoever from this Court.

WHEREFORE, Defendant respectfully requests that this Court dismiss plaintiffs' complaint and award it fees and costs herein.

COUNT FOUR

24. Defendant's responses to the allegations contained in paragraphs 1 through 23 above are realleged and incorporated as if fully set forth herein.

25. The allegations contained in paragraph 25 of plaintiffs' complaint are denied.

26. The allegations contained in paragraph 26 of plaintiffs' complaint are denied.

27. Defendant denies that plaintiffs are entitled to any relief whatsoever from this Court.

WHEREFORE, Defendant respectfully requests that this Court dismiss plaintiffs' complaint and award it fees and costs herein.

COUNT FIVE

28. Defendant's responses to the allegations contained in paragraphs 1 through 27 above are realleged and incorporated as if fully set forth herein.

29. The allegations contained in paragraph 29 of plaintiffs' complaint are denied.

30. The allegations contained in paragraph 30 of plaintiffs' complaint are denied.

31. Defendant denes that plaintiffs are entitled to any relief whatsoever from this Court.

WHEREFORE, Defendant respectfully requests that this Court dismiss plaintiffs' complaint and award it fees and costs herein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim against this defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to maintain a cause of action against this defendant based upon 42 U.S.C. § 1983 pursuant to the holding in the United States decision of *Will v. Michigan,* —— U.S. ——, 109 S.Ct. 2304 (1989).

THIRD AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to maintain an action against this defendant insofar as the legislation and Regulation at issue enjoy the presumption of validity and, in fact,

were duly enacted and are not violative of any provisions of the Federal or State constitutions.

Respectfully submitted,

STATE OF RHODE ISLAND

By Its Attorney,

JAMES E. O'NEILL
Attorney General

/s/ Rebecca Tedford Partington
REBECCA TEDFORD PARTINGTON
Special Assistant Attorney General
Atty Reg # 3890
72 Pine Street
Providence, RI 02903
(401) 274-4400
FAX: (401) 277-1331

[Certificate of Service Omitted in Printing]

INTERVENORS MEMORANDUM OF LAW

The Rhode Island Liquor Store Association (RILSA) is a non-business corporation organized under the laws of the State of Rhode Island whose membership consists of holders of Class A Retail Liquor Licenses issued by the State of Rhode Island. The active membership in the Association consists of approximately one hundred fifty (150) Class A Retailers. The overwhelming majority of its members are small retail store owners which are, in effect, family run businesses.

The primary purpose of RILSA is to disseminate information to its membership concerning good business practices and also to take an active involvement in legislation which may be pending before the General Assembly. RILSA has been involved in the present landmark case controlling the issue of the right of the State of Rhode Island and the Liquor Control Administrator to regulate the advertising of retail liquor sales. *RILSA v. Evening Call Publishing Co.*, 497 A.2d 331 (1985); (see also *S & S Liquor Mart, Inc. v. Pastore*, 497 A.2d 729 (1985)).

The overwhelming majority of the Class A Retailers in the State of Rhode Island operate at a marginal profit. The elimination of the prohibition on advertising of liquor sales would, of necessity, add an additional financial burden to each of the Class A Retailers who would be obliged to participate in the advertising arena and would be at a definite disadvantage when matched up against retailers who hold multiple licenses.

The Plaintiffs in the within matter are integrally related to one another in that the principal of the 44 Liquor Marts is employed by the Haronian family which owns the two licenses in Taunton, Massachusetts, and an additional Class A license located on Mineral Spring Avenue in North Providence, Rhode Island. The position maintained

by the Plaintiffs is diametrically opposed to the positions maintained by the other Class A Retailers within the State of Rhode Island. The concern of RILSA is that the application by the Plaintiff for relief from this Court may be construed as being the prayer of all similarly situated Class A Retailers. The simple fact is that the small, family run, Class A Retailers are adamantly opposed to advertising.

Rule 24 of the Federal Rules of Civil Procedure provides that anyone may be permitted to intervene in an action when an applicant's claim and defense in the main action have a question of law or fact in common. Intervention, generally, is based on the court's discretion. FRCP 24(b). Additionally, an applicant may have an intervention by right when the applicant claims an interest relating to the property or transaction which is the subject of the lawsuit, and the applicant is so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest unless the applicant's interest is adequately represented by existing parties. FRCP 24(a)

As has been indicated above, the Plaintiff in this matter certainly does not represent the interests of your intervenor. The need to show that the intervenor's interest is not adequately represented by existing parties requires only that there be a minimal showing. *Trbovich v. United Mine Workers of America,* 404 US 528, 92 S.Ct. 630 (1972). The Court should consider any legal effect on the intervenor's interest in determining whether the motion should be granted. *Natural Resources Defense Counsel, Inc. v. United States Nuclear Regulatory Commission,* 578 F.2d 1341 (10th Cir. 1978).

For the above-stated reasons, your intervenor requests that the motion to intervene be allowed.

RHODE ISLAND LIQUOR
STORE ASSOCIATION

By its Attorney,

/s/ Robert M. Brady
ROBERT M. BRADY
(#2070)
One Grove Avenue
East Providence, RI 02914
(401) 434-2800

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C.A. No. 92-0115/P

44 LIQUOR MART, INC. and PEOPLE'S SUPER LIQUOR STORES, INC.

v.

KATE F. RACINE, in her capacity as Rhode Island Liquor Control Administrator

---

STIPULATION

Now come counsel for all parties, and hereby agree that the following facts may be agreed upon as true and established as such in the trial of this matter:

1. Defendant Kate Racine currently holds the position of Liquor Control Administrator for the State of Rhode Island and has held that position since August of 1991.

2. The plaintiffs are 44 Liquor Mart, Inc., and People's Super Liquor Stores, Inc., businesses engaged in retail sales of alcoholic beverages. 44 Liquor Mart is located in Johnston, Rhode Island. People's Super Liquor Stores, Inc., is located in New Bedford and Fairhaven, Massachusetts.

3. The Rhode Island Liquor Stores Association, a trade group of small retail liquor stores, has intervened as a party defendant seeking to uphold the price advertising ban.

4. On December 17, 1991, Plaintiff 44 Liquor Mart, Inc. was found to be in violation of R.I. Gen. Laws §§ 3-8-7 and 3-8-8.1 and Regulation 32 of the Liquor Control

Administration regarding the advertising of alcohol prices or referring to price in any way with regard to alcohol. 44 Liquor Mart, Inc. was fined for that violation and paid the fine. 44 Liquor Mart, Inc. did not take advantage of the appeal process provided by State statute. The attached newspaper advertisement is submitted by all parties as a full exhibit. The transcript of the hearing before the Liquor Control Administrator is submitted by all parties as a full exhibit.

5. Other liquor licensees, as well as newspapers within the State, have been warned and fined for a violation of this regulation.

6. Plaintiffs believe that they will each realize an economic benefit of more than $100,000 per year if the price advertising ban is lifted.

7. Racine vigorously enforces the price advertising ban.

8. Peoples has made extensive use of price advertising in Massachusetts where it is permitted.

9. Peoples has attempted to place its advertisements, which include price information, in Rhode Island communications media, but has been refused.

10. Rhode Island communications media reach both Rhode Island and Massachusetts citizens.

11. The proposed speech does not concern an illegal activity and presumably would not be false or misleading.

12. The State of Rhode Island has a substantial interest in regulating the sale of alcoholic beverages.

Respectfully submitted,

FOR THE PLAINTIFFS:

/s/ Evan T. Lawson
EVAN T. LAWSON, ESQ.
425 Summer Street
Boston, MA 02210

/s/ Barry J. Kusinitz, Esq.
BARRY J. KUSINITZ, ESQ.
20 Westminster Street
Providence, RI 02903

FOR THE RHODE ISLAND LIQUOR STORES ASSOCIATION:

/s/ Robert M. Brady
ROBERT M. BRADY, ESQ.
One Grove Avenue
East Providence, RI 02914

/s/ William P. Gasbarro
WILLIAM P. GASBARRO, ESQ.
685 Warren Avenue
East Providence, RI 02914

FOR DEFENDANT KATE F. RACINE

/s/ Rebecca Tedford Partington
REBECCA TEDFORD PARTINGTON
Special Assistant Attorney General
72 Pine Street
Providence, RI 02903

Date: 11/16/92

(Certificate of Service Omitted in Printing)

BEST AVAILABLE COPY

Thanksgiving Harvest

44 LIQUOR

39 PUTNAM PIKE • In the 44 Plaza • 2?2-7700

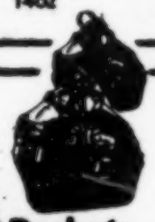
$1.79

State Line Chips
Reg or dip
14oz

2/$1.29

Schweppes Mixers
Ginger Ale, Tonic Water, Club Soda
1 Liter

Peanuts
in shell
Fancy roasted
and salted
89¢ LB.



Gift Baskets
Wine & Liquor
Choose one of or custom
Galore or Personalize one of
your own
at no extra charge.

CIGARETTES
Cartons &
Packs
Sold at state minimum
Reg & King 17.33 ct
100's & 120's 17.65 ct
Packs 1.77

We've got you Number.

THE NUMBERS

Beer

COORS EXTRA GOLD
12 can case

Wines & Coolers

America's Favorite
"Bring Sutter Home"

SUTTER HOME
WHITE ZINFANDEL
750 ML

All your
favorite flavors

SEAGRAM'S
WINE COOLERS
4 PK.

HEINEKEN
12 N.R. Case
America's Favorite

M. G. VALLEJO
WINES
1.5 Liters
Wine for gift giving!

CARLO ROSSI
WINES
4 Liter
Burgundy, Chablis, Rose, Blush,
Pilsano, Rhine, Pink Chablis

BEEFEATER GIN
750 ML
It's Martini time!

ROMANA
SAMBUCA
750 ML

DI SARONNO
AMARETTO
750 ML

WOW!

POPOFF
80°
1.75 Liters
Great with

CAPTAIN MORGAN
SPICED RUM
1 Liter
Rum drinkers' delight

E & J BRANDY
1 Liter
Great taste to you.

SEAGRAM'S 7
750 ML
Gift boxed and ready to go

JACK DANIELS
750 ML
There's only one Jack Black!

J & B SCOTCH
750 ML
Perfect for gift giving.

State Law prohibits advertising Liquor Prices.

OPEN MONDAY-SATURDAY 9-10

PUBLISHER'S NOTE:

The following page is unavailable for filming;

50

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
LIQUOR CONTROL ADMINISTRATION
233 RICHMOND STREET
PROVIDENCE, RI 02903-4200

SHOW CAUSE HEARING

DOUGLAS LIQUORS INC.

44 LIQUOR MART

APPEARANCES:

KATE F. RACINE — LIQUOR CONTROL ADMINISTRATOR

HOWARD R. HARONIAN — COUNSEL FOR DOUGLAS LIQUORS, INC. AND 44 LIQUOR MART

ADMINISTRATOR RACINE: Good morning.

VOICE: Good morning.

ADMINISTRATOR RACINE: It's Tuesday, December 17th. We're here at the Division of Liquor Administration on a show cause hearing regarding Douglas Liquors and 44 Liquors. The reason of the show cause is the disregard for the advertising and general statute of the State of Rhode Island regarding advertising. My name is Kate Racine. I am the Liquor Control Administrator. To my right is Audrey McDermott, who at this moment is acting as a technician but is also Supervisor of Inspections for the Liquor Control Administration. I guess we'll begin with Douglas Liquors. Douglas Liquors have counsel present?

MR. HARONIAN: Yes. My name is Howard R. Haronian. I'm the attorney for Douglas Liquors. My office is at 190 Commerce Drive, Warwick, Rhode Island.

ADMINISTRATOR RACINE: Thank you. 44 Liquors?

MR. HARONIAN: I also represent 44 Liquors. 44 Liquor Mart.

ADMINISTRATOR RACINE: Okay. May I have the name of the owner of Douglas Liquors?

MR. HARONIAN: It's a corporation, Douglas Liquors Inc. The sole stockholder is Kathleen Haronian. Kathleen with a K.

ADMINISTRATOR RACINE: Okay. 44 Liquor Mart?

MR. HARONIAN: It's a wholly owned corporation. The stockholder is Mr. James Spevock. And they are both here.

ADMINISTRATOR RACINE: Thank you. Okay, let's go forward and that is since I came aboard as Liquor Administrator, one of the things that I have had to deal with almost on a daily basis, violations of advertising. Dealing with questions about advertising. First, following

it up, calling people, telling them that the law states to make reference to price in any way is a violation of the statute. Repeatedly, we have had some who have seen fit to go forward and then say, well, I didn't know. We won't run the ad again. That applies to Douglas Liquors and 44 Liquors. At first we felt if we could just deal with the managers or the people placing the advertising, we'd be able to get a handle on it. It hasn't worked. On a daily basis, the phones will ring and there's a complaint. Now, both 44 and Douglas are well aware that there were some tremendous concerns at the time of licensing. Many people said they were a chain, they were going to be able to take over the liquor industry in the state of Rhode Island, and there was a genuine fear that set in among the liquor establishments. The owners knew that. It was quite apparent from the beginning what we were going to be dealing with. I was not here at the time of the licensing. I came shortly after and I met with Bill Kane and I said to him the only thing you've got to do is you've got to obey the law because if you start sending signals out there, first of all 'cause it's the right thing to do, but secondly, you're going to have people and they're going to be running into this office and they're going to look at any way they can to revoke that license. Well, they're here. They're on the door step. Trust me. Okay? And every time the ads come out, they're on the phone. And it's always wonderful at least if you can know what your opposition may be. And in this case, I would call, I would speak, I would say, you know, can you do this? He'd call me. He'd say can I do that? I'd say no. Repeatedly he did what he felt like doing. Now I can't blame him, but I would say, "Bill, are you responsible for the advertising?" And he would say, "Yes." He'd say can I put in that Rhode Island General Law prohibits the price advertising. Sure. I got the ad. It's sent in. He's got "Wow", "Ho", "Yo", and we're back at it again. And it's a slap in the face to me. I don't want to see businesses

in trouble. Now, under the statute and I'll read it into the record again and I have sent numerous copies out of this office—not I but certainly Audrey has—regarding the price or reference to the price of any alcoholic beverages and it refers to newspapers, periodicals, radio, TV broadcaster or any other person, firm or corporation with a principal place of business in the state of Rhode Island, the price—shall not make reference to the price in any way. Any person who violates any of the provisions of this section is guilty of a misdemeanor. All right, fine.

MR. HARONIAN: Could I interject something?

ADMINISTRATOR RACINE: Sure.

MR, HARONIAN: My reading of that statute, which is three eight eight, point one, is that the statute prohibits the person who's in the business of advertising, from advertising anything in reference to price. That would apply to the Providence Journal or whoever. Radio stations or whatever. I think the operative section here would be three eight seven which talks about the licensee.

ADMINISTRATOR RACINE: But I also want to state for the record, Mr. Haronian, that counsel has advised me that any other person, okay, so they're using both.

MR. HARONIAN: Well, I just wanted to tell you the position that we have just so the record will be clear for it. You know, we may—we may just end up disagreeing on that, but as to how we're going to operate, I think we can probably come into agreement on that, but—

ADMINISTRATOR RACINE: I hope so.

MR. HARONIAN: From the point of view of where we are and why I think that probably Bill Kane felt he was justified in doing what he did is that three eight eight one is clearly aimed at the publisher. In fact, the cases cited under it all deal with a case of the association against the Evening Call which it published an ad.

ADMINISTRATOR RACINE: Yuh.

MR. HARONIAN: And we refer to other people in the statute. It says any other person, firm or corporation,

principal place of—which is engaged in the business of advertising or selling advertising time or space. That's an adver—that's an advertiser, an agency, you know. Anyway—

ADMINISTRATOR RACINE: I raised—I raised that as well and they said you could cite that statute as well as three eight seven. We'll put three eight seven, advertising the price of beverages, wine or distilled, if you'd rather be cited under three eight seven, that's fine with me. No manufacturer, wholesaler, or shipper from without the state, no holder of a license issued under the provisions of this title and chaper shall cause or permit the advertising in any manner whatsoever the price of any malt beverage, cordials, wine, or distilled liquor offered for sale in this state provided, however, that the provisions of this section shall not apply to price signs or tags attached to or placed on merchandise for sale within the licensed premises in accordance with rules and regulations of the department.

MR. HARONIAN: (Inaudible murmur.)

ADMINISTRATOR RACINE: Let the record show that Mr. Haronian would prefer the three eight seven, We will take the three eight eight one. We will not use that for citing. We will go under three eight seven.

MR. HARONIAN: And my—my point on three eight seven is that we are not, or that the ads in question did not advertise price. Simply—

ADMINISTRATOR RACINE: Or allude to price.

MR. HARONIAN: Well, see the statute says in any manner whatsoever the price.

ADMINISTRATOR RACINE: That's correct.

MR. HARONIAN: The price.

ADMINISTRATOR RACINE: That's right.

MR. HARONIAN: And we didn't indicate the price.

ADMINISTRATOR RACINE: No. And it—and what we're saying is it has always been the policy of the Liquor Control Administration that to allude to price in any way with the wows all over the place is directly

referring that if I go into Douglas Liquor, Bacardi Breezers and Bailey's Irish Cream are going to be a real sale.

MR. HARONIAN: Uh-huh.

ADMINISTRATOR RACINE: There's something to draw. Division of Liquor Control Administration is one that causes—is—is by statute to bring about temperance. It is not to have wows, leaders, or whatever regarding liquor. This is exactly what the General Assembly did not want.

MR. HARONIAN: I—I—I understand and I, you know, I think what would really help everybody is if, in the regulatory process, the only regulation I would find is number 32, which expanded a little bit on the language of the statute and nobody wants to get into difficulty over this whole issue, and I think the better way to approach it might be to regulate on this subject and point out just what's—what's good and isn't good. This thing says no placard or sign—placard or sign of any kind which is visible from the exterior of any Class A premises licensed to sell at retail shall make reference to the price of any alcoholic beverage or mixture of alcoholic beverages. And then it says you can post prices inside after that. That's really, you know, if somebody reads that and reads three eight seven, they could come to the conclusion as long as they don't put the price in, they could say we have wonderful prices, we have—as long as they don't tell you what the price is. Philosoph—

ADMINISTRATOR RACINE: They—they might be able to draw that conclusion on their own; however, with repeated warnings, which we have here, from the Liquor Control, stating most emphatically and specifically do not continue this operation, it was continued. And regarding the statute and possible change or redefinition, I have made that proposal to people in the liquor industry and all of a sudden they don't want to hear it.

(Inaudible murmur)

No, I'm sorry. I'll speak with you later. But the—but the fact is is that's what we've got and so you've got an industry that it's war with each other, which is not my problem, okay. I'm only hear to enforce the statutes that the General Assembly passes and I have repeatedly stated then go get a lobbyist and go change it. Oh, no, we don't want to do that. We only want to put in what we want and then we want to call you on what somebody else does.

MR. HARONIAN: Yeah.

ADMINISTRATOR RACINE: Okay? So we're leveling this playing field.

MR. HARONIAN: Would—for future—for future reference along those lines, would it be, in your view, proper for a—a license holder to publish ads requesting that people join a movement to do just that. To change the law.

ADMINISTRATOR: I don't think that I would look upon it that—that a liquor ad should be used as a motivator to change the law. I think all of the package store owners have their own association that they're all involved in in a liquor store. Wholesalers, retailers, whatever. That's the arm to use. That's where they should hold a meeting or 44 and Douglas Liquors wants to go to the Assembly, get someone put in a bill, then fine, do it.

MR. HARONIAN: Well, we're thinking of putting an ad in the paper saying—pointing out to people that the statute and the regulations, in our view, are anti-consumer. Now in the view of some other liquor stores owners, those who control the association, they don't want to change that.

ADMINISTRATOR RACINE: That's correct.

MR. HARONIAN: Because they have a great fear that somehow they're going to be hurt if that chang—if the law changes.

ADMINISTRATOR RACINE: Oh, I think they are going to be. I think that's pretty obvious. And that's not up to me to make that decision.

MR. HARONIAN: I don't know because Massachusetts allows—we're one of the last few states that doesn't allow advertising. And liquor store owners seem to do pretty well in Massachusetts and they probably do in Connecticut. I don't know. But I know in Massachusetts they do. So, all I'm trying to —I don't want to get us in trouble again, and if 44 decides tomorrow they want to publish an ad saying look people out there, there's a law on the books which prohibits us from advertising price, so we're not going to do that. What we want to tell you people is you should contact your legislators and you should tell them you don't want that law. You want it changed. And I think we have a First Amendment, probably, right to do that.

ADMINISTRATOR RACINE: Sure.

MR. HARONIAN: We're not going to advertise the pricing, but we would like to be able to tell people why we can't and that they should go out and change it. And maybe we can get the association to join in that. I don't know. I kind of doubt it.

ADMINISTRATOR RACINE: What I—you know —what I've experienced is just the opposite of that. As soon as they know that it's going to go to the Assembly or people should propose it, and certainly you're within your right to do it. I think you're going to cause yourselves more harm than good within the industry and there'll be more questioning about your licenses and I think you can anticipate an appeal about fifteen days after you place the ad, but that is within your purview and we'll hear it at that time. I think there are other ways to do it. And your prices become known very quickly in a community where you render service, sponsor Little Leagues, and do community action, which is where, I believe, the Assembly was coming from when they were so strict with this and I think that they don't—and I don't think a lot of people do think it because of the weight of the—of the liquor lobby and to some extent I agree and then when you really begin to look at it, you've

got this one. It would become incredible. Parking lots would be full of these leader boards and they'd all be giving away something and it would become a nightmare in terms of zoning and keeping properties, you know, somewhat within the confines of the business establishment. So, for all of those reasons, I do find that Douglas Liquors has violated, if you care to, General Laws three eight seven and I'm going to ask Ms. McDermott how many violations we had regarding them. Was it two? And they're two hundred dollars apiece so I'll fine them four hundred dollars to be paid today, check made out to the division of Liquor Control Administration.

MR. HARONIAN: Okay. We would just like for the record to, obviously, enter our objection to that and I would like to preserve for the record any constitutional arguments that we might have with respect to first amendment rights and other constitutional rights, some of which are federal and some of which are state. I know there have been—there's this case—a 1985 case in Rhode Island, the S & S Liquormart case, dealing with the state's—the state's view of what the constitutional provisions require and allow. That, to the best of my knowledge, that never has been tested in Federal Court as to the Federal Constitution.

ADMINISTRATOR RACINE: Are you saying for the record that you don't want to pay this fine?

MR. HARONIAN: I don't know yet. I'm going to consult with the client. But I—I know the fine has been imposed and we'll either pay it or take an appeal.

ADMINISTRATOR RACINE: And where—

MR. HARONIAN: I want—I had to state for the record constitutional arguments.

ADMINISTRATOR RACINE: Okay. And where are you going to take the appeal?

MR. HARONIAN: Pardon me?

ADMINISTRATOR RACINE: Where are you going to take the appeal?

MR. HARONIAN: Well, it would be—

ADMINISTRATOR RACINE: Are you going to take it today for a stay of this decision to Superior Court?

MR. HARONIAN: Well, I, you know, we'd have to follow the Administrative Procedure Act which would be to the Superior Court, yeah. And when we would—what somebody is proposing, other counsel has proposed is perhaps go straight to Federal Court and try to get some ruling under the Federal Constitution. But we'll have to consider all of that.

ADMINISTRATOR RACINE: Okay, so I give you that opportunity. Of course it's within your right. I do believe that certainly I will affix that fine and I will await further notice from you—

MR. HARONIAN: Sure (speaking simultaneously with Administrator).

ADMINISTRATOR RACINE: —by the end of today as to what—in writing as to what the decision is.

MR. HARONIAN: Yes. Okay. We'll either be in—someone will be in here to pay the fine or we'll ask you for a stay while we take the appeal.

ADMINISTRATOR RACINE: Okay. And now let's go to—

MR. HARONIAN: Fourty-four?

ADMINISTRATOR RACINE: —44 Liquors. Again stating for the record that we will cite Chapter three eight seven, advertising price of malt beverages. We are now before—have before us 44 Liquors that no manufacturer or wholesaler or shipper from without the state and no holder of a license issued under the provisions of this title and chapter shall cause or permit the advertising in any manner whatsoever of the price of any malt beverage, cordials, wine or distilled liquor offered for sale in the state provided however the provisions of this section shall not apply to price signs or tags attached to or placed on merchandise for sale within the licensed premises in accordance with rules and regulations of the department. And at this point in time, I have before me 44 Liquors, represented by counsel in the name of Mr. Haronian and

also I believe Mr. Spevock is present. Let the record show that on October 11, 1991, I, Kate F. Racine, Liquor Control Administrator, sent a letter to Mr. Spevock at 44 Liquor Mart Inc., 39 Putnam Avenue, Johnston. Dear Mr. Spevock: The purpose of the notice is to advise you that the Liquor Control Division of the Department of Business Regulation has received a complaint regarding your price advertising. The letter served as a warning. Mr. Spevock was—any further violations of said statute shall result in a show cause hearing. Three months later, here we are, December and we—I believe there was another complaint as well that went out to Mr. Spevock regarding 44 Liquor Mart. Let the record show that we did send a letter to Mr. Spevock, which he claims that he did not get, for a hearing that was called last week. I then sent out Tom Broderick from this division and had the envelopes signed to indicate that in fact those letters have been presented. Mr. Spevock if you'd care to or through counsel, you had—

MR. SPEVOCK: I'd like to just confer with counsel, if I may.

ADMINISTRATOR RACINE: Certainly.

(Pause)

MR. HARONIAN: Probably, to have some time all the way around, we'll incorporate the same responses we had in the other case, which is a very similar case, if you'd care to do that.

ADMINISTRATOR RACINE: No, I want to hear them both separately because—

MR. HARONIAN: Okay, fine.

ADMINISTRATOR RACINE: —and I'll tell you why. I think that to hear them together, even though it may be strange that you both—you have the same counsel, immediately it's going to be flagged.

MR. HARONIAN: True.

ADMINISTRATOR RACINE: It's just going to be one more thing that they will have against you—

MR. HARONIAN: Yeah.

ADMINISTRATOR RACINE: —so I would prefer to handle them separate and apart, very distinctly. Because I think the other way, Mr. Haronian, we're just looking for trouble here, you know.

MR. HARONIAN: Yeah, I think—I think you're right. Mr. Spevock was just explaining to me that he did —he was sort of called down here and given some warnings. He does not recall being warned specifically about the wows in the ad. He recalls being told you have to be careful how you advertise and you're a new licensee so we're going to tell you all these things, but he didn't know that the wow business in the published ads was going to be a particular problem. Anyway, as I—as I previously discussed in a—in a analogous case, we believe that the statute cited is a statute controlling commercial advertisers such as the Providence Journal, in which those ads appeared. And we might inquire as to whether the Journal is going to be brought to task under those provisions of the statute and regulations.

ADMINISTRATOR RACINE: Yes, they are. And that has to be handled for them—it's considered a misdemeanor—through the office of the Attorney General.

MR. HARONIAN: Uh-huh.

ADMINISTRATOR RACINE: And we have been on the phone with him this morning and the December 6th letter to Mr. Spevock that was hand delivered stated three eight seven for the record. He was not cited under the other statute. Okay? And I'll put that in the record. Dear Sir, I am sending this letter to you regarding your continuous disregard for the Rhode Island General Laws regulating the advertising of alcohol or referring to price in way with regard to alcohol. Rhode Island General Laws three eight seven. The division of Liquor Control Administration has been emphatic in stating their demand that you cease and desist your advertising practices and you have ignored repeated requests. Therefore, Thursday, December 12—which was the hearing that they could not

be present for—at nine thirty a show cause hearing will be held at the Liquor Control Administration, two thirty-three Richmond Street. You have the right to be accompanied by counsel at such hearing. Very truly yours, Kate F. Racine. The note that I made—this is the original letter that they had stated they did not receive—consider this the second notice December 17th at nine thirty is the hearing for show cause. And, again, they were sent registered to 44 Liquors and Douglas on twelve twelve ninety-one. And I can understand the concerns and statements of Mr. Spevock because I do remember quite vividly that we were in my office and we talked about advertising and I said, you know, be careful and informed him. However, I personally, along with Audrey McDermott, have had repeated, repeated conversations with Bill Kane. And at that point in time, when I would ask if Mr. Spevock was there, Bill Kane said he would handle it, you know, and so forth. And he apol—and he apologized and said it got in. Then he said no, the Providence Journal is doing it, I'm not doing it. They keep putting that on my ads. Providence Journal said no, we are not putting that on his ads. So it has not been easy for us, either, as you can understand. All we're trying to do is certainly abide by the statute, but to get everyone to understand that the law, as long as that is where it is, that we have to enforce it because there is bedlam in here on a daily basis if we don't. And the phone does not stop ringing and believe me, there are people out there looking at 44 Liquors and Douglas Drug and I think some of them have a full time job doing it. Now, every time the phone rings, do we run out there? Of course not. And that's why repeatedly I would say do us a favor and Bill would think of a new way that he could and there's nothing wrong in ingenuity. God love it. But I said just don't have the ingenuity cause mayhem in this division because once you do it, they're all up and running. They got tote boards. They got kangaroos. They got anything they can think of and it doesn't serve any of us well. And again, if you want

it to be changed, that's entirely your right. You have the right to go up to the Assembly. You have the right to pre-file. This is the period of time. And give it a shot and see what's going to happen. All I'm saying as the Administrator and through my staff is could you just be fair. If it says don't do it, don't do it. (Pause) And are there two violations against 44 as well? So it's a four hundred dollar assessment for 44 as well.

MR. HARONIAN: I'm sorry. I missed that.

ADMINISTRATOR RACINE: It's a four hundred dollar—it's—it's two offenses as reported by my sup—supervisor of inspections and I guess this division will await further notice from you as to the process of appeal, if that's what you are going to consider.

MR. HARONIAN: Yuh.

ADMINISTRATOR RACINE: But again, as we conclude this, and you're—you're within every right to do whatever, as you well know, but understand full well that the laws are there and the laws are there for a reason. We didn't write the laws. We're only here to enforce them.

MR. HARONIAN: Sure. I understand. I just—I did make one comment in the other case and I think it might be something that could be helpful to everyone concerned whether or not this gets appealed or whether or not this group decides to go to Federal Court or whether we go to the General Assembly eventually or what. It—I think it would be a good idea if the regulation was fleshed out a little bit so that it's more specific.

ADMINISTRATOR RACINE: Sir, I have no objection to that. I repeatedly stated to Mr. Spevock early on that I felt that had to be done.

MR. HARONIAN: Yuh.

ADMINISTRATOR RACINE: Okay? But—

MR. HARONIAN: What's the process? (Speaking simultaneously with Administrator)

ADMINISTRATOR RACINE: —I don't do that. You can put a bill in. You can take—

MR. HARONIAN: No, no. Not the law. The regulation.

ADMINISTRATOR RACINE: The regulation? I'm going to hold hearings in February.

MR. HARONIAN: Yeah.

ADMINISTRATOR RACINE: And I intend to look at all of them. And after my experience here, now, for the last four or five months, I think I can better address what we have. I know I'm going to get some flack over it, but I still thing it's worth it. And to be a little bit more aware of what advertising is all about today.

MR. HARONIAN: So we're not—we would not be in a position probably to agree that this—this statute should be enforced, okay, but if it's going to be, it would be so much easier for everyone concerned, for your office, for the dealers, to know if it said, for example, this kind of ad is considered to be price advertising, and with a laundry list of the types of things you're not supposed to do would help in the interim anyway.

ADMINISTRATOR RACINE: Well, I mean, I know that it would help, of course. As soon as you begin to delineate, there's a brain surgeon that's got a better way to delineate and their interpretation is and you're right back where you started because that's America and rah, rah, rah. But I think the office has—has been really fair in calling people and just saying, you know, come on down, rules and regulations, let's talk about it, and we did have a working relationship with Bill Kane and he'd call up—I mean, he was getting a little bit more clever as the hours ticked, but the idea was I said, well, at least call Bill. You know. If we feel or Audrey feels, she's the one that really makes the rulings regarding that. I don't. But I said, you know, don't get yourself in a jam. And again we'd call and oh, the Journal did it and so forth, until finally the people would call and they were being brought in and they'd say but 44's still doing it, Douglas Liquors is still doing it. So I said okay. And now we've got—we're going down to the east bay and the west bay. Believe me, there's more to follow. But

at least make them aware that one isn't going to do it until we change the rule or we promulgate new rules and regulations or we go to the Assembly and amend. And that's fine with me, too.

MR. HARONIAN: Okay.

ADMINISTRATOR RACINE: Okay? You know, I thank you for coming in. I await your decision. I look forward that you will obey the statutes whether you're on appeal or Superior Court or wherever you may go because it just makes everybody's life easier. And it's Christmas. I realize the money situation. I realize one has to compete, but also be aware that that may not be the way to do it. And I'm not so sure what it is at this point in time, but I think if you open Pandora's box, sometimes you create a lot more than you really want to deal with. And as I say—

MR. HARONIAN: It's the law of unintended results.

ADMINISTRATOR RACINE: Well, that's a good way. I've used a few other phrases in the last few months regarding it, but that's very nice. Thanks very much.

MR. HARONIAN: Thank you.

ADMINISTRATOR RACINE: And have a good holiday.

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C.A. No. 92-0115/P

44 LIQUOR MART, INC. and PEOPLE'S SUPER LIQUOR STORES, INC.

vs.

KATE F. RACINE, in her capacity as R.I. Liquor Control Administrator

INTERVENORS: R.I. LIQUOR STORE ASSOCIATION

EXCERPT FROM TRIAL TRANSCRIPT

[112] MS. PARTINGTON: When there is no advertising. If you want to find the best deal, you have to hunt for it. You have to spend sometime and time is money and your time is worth something in finding the best priced commodity. So there are two ways that the price is increased. Also another way that the statute directly advances temperance, and it has nothing to do [113] with price.

The state wants to ensure that the only people that go into a liquor store are people that are so inclined in the first place. People that were going to purchase beforehand and not people that open the newspaper, saw a blow-out sale going on at giant liquor stores and went in and bought several cases and, quite frankly, Judge, the Liquor Control Administrator's emphasis here is not on responsible drinkers. Of course it's not. It's on people that have a very limited income such as young people, people that don't have a lot of people, college students

who would pool their money, go through the newspaper, find out who's having the case sales, the keg sales, drive down to the liquor store and buy as much beer as they can. That's what this particular statute is designed for.

THE COURT: In other words, you're saying that this argument, which has been put forth by counsel, it's sort of—I don't know just how to term it. It's just created without any real substance to it in the sense that it's by preventing price wars that you directly foster temperance?

MS. PARTINGTON: He feels that's an indirect effect; the state feels—

THE COURT: I know but I'm saying that you [114] are arguing that that's just not so. It's not—that indirect argument is just unreal. It's unrealistic; it's not true; it's a figment because you feel that banning price wars is the direct way of fostering temperance.

MS. PARTINGTON: Correct, Judge. I think he terms what's going to happen as an indirect effect; the state terms it as a direct effect. I have, if your Honor would like to consider it, both parties have discussed a case in all the briefs that have been submitted, Adolph Coors v. Brady case. That was in the 10th Circuit. The 10th Circuit sent it back down to Colorado concerning the strength wars. I have a transcript of the judge's bench decision that says preventing strength wars, for instance, 3.2 beer, 3.5 beer is a valid concern to the state and upheld some advertising restrictions. In that jurisdiction you cannot advertise the strength of an alcoholic beverage as an inducement to buy.

THE COURT: All right. Let's go onto something else.

MS. PARTINGTON: Okay.

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C.A. No. 92-0115/P

44 LIQUOR MART, INC. and PEOPLE'S SUPER LIQUOR STORES, INC.

vs.

KATE F. RACINE, in her capacity as R.I. Liquor Control Administrator

INTERVENORS: R.I. LIQUOR STORE ASSOCIATION

DEPOSITION EXCERPTS OF HENRY SAFFER, Ph.D.

* * * *

Q. Now, Doctor, based upon—let me make sure I get everything here—based upon your experience, the materials that you've reviewed, that we just marked, all these documents, on the fact that both plaintiff liquor stores expect to make a profit of upwards of $100,000 per year if this ban is repealed, and based upon generally accepted economic principles, do you have an opinion, to a reasonable degree of scientific and economic certainty, as to whether the Rhode Island ban of price advertising promotes temperance?

A. Yes, I do.

Q. Can you tell me what that opinion is?

A. In my opinion, the ban on price advertising in Rhode Island promotes temperance.

Q. Can you explain to us how?

A. Yes, I can do that. The economists look at the price of alcohol in having two parts; one, is the search

time involved in purchasing the product, in this case, alcohol, and the second part would be the money price, and I think that the price information that's contained in price advertising allows consumers to find lower products, lower product prices, in this case, alcohol, more easily, and so the average price for alcohol would be lower if people could more easily find lower prices. They have the information where they can get alcohol at a cheaper price, then it will be easier for them to find it. The second part of it is the ban on price advertising would not only lowers the money price, but lowers the search time. People don't have to look around as much in order to find lower prices, and then there is really a third part of it, too, the ban of the price advertising results in a greater variance of prices in the state than you'd have without a ban, and that essentially means that people have an incentive to look around more because there's a greater dispersion of prices. Prices can vary more from one place to another than they would in the absence of a price advertising ban, so people would figure that they could perhaps gain something by additional shopping, search time. If there were no ban on price advertising, the variance of prices would probably go down and there would be lesser, lesser search time. All of these factors contribute to linking a price advertising ban to higher prices, and we have pretty good evidence that higher prices results in lower alcohol consumption. That's essentially the link.

Q. Doctor, again, I'm going to ask you a very lengthy question. Based on your experience, on the materials you reviewed, on the fact that both plaintiff liquor stores expect to make a profit upward of $100,000 per year if the ban is repealed, and based upon generally accepted economic principles, do you have an opinion, based upon a reasonable degree of scientific and economic certainty, of the effect of abolishing the Rhode Island ban on advertising of alcoholic beverages?

A. Yes, I do.

Q. Can you tell us what that opinion is?

A. I think if the ban were abolished that it would lower average prices and increase consumption.

Q. And could you, again, tell us, explain to us why?

A. It's the same sort of argument. Same argument that if the ban on price advertising were removed than the average price would go down, and the reason the average price goes down is people can more easily find lower prices.

Q. Is there any one of these documents that you relied upon that explains the theory about search cost?

A. The article by Stigler and Becker, it goes into some detail about it, and also the article by Ornstein and Hanssens specifically relates this theory to the case of price advertising ban.

Q. Okay; since you've mentioned the Ornstein and Hanssens report, Doctor, can you briefly tell us how that article relates to the issue we're discussing here today?

A. The Ornstein and Hanssens study, they include a variable measuring price advertising, and they find that places that allow price advertising have a higher consumption, and they explain the reasoning is basically the search process, and they also explain that—they also report that places that have bans in price advertising have higher mean prices for alcohol and a greater variance in prices. So they both provide a theortical reason and they provide empirical information showing that a ban in price advertising, when price advertising is banned. it reduces consumption.

* * * *

Q. Now, Dr. Saffer, you personally have done research in this area, it did not involve price advertising bans, is that correct?

A. That's correct.

Q. But it did involve general advertising bans, your international study, can you tell us about that, please?

A. Yes, I did a study of 17 countries over 14 years and found—well, these countries have different advertis-

ing ban policies. Some places ban all alcohol advertising, and some places ban just beer and wine advertising. I found looking at these different countries, that places that had bans on alcohol advertising had lower alcohol consumption, lower liver cirrhosis, mortality rates, and lower highway fatalities rates.

Q. How many countries were involved in this study?

A. Seventeen countries.

Q. Over what period of time?

A. 1970 to 1983.

Q. And they involved an entire country, not just a section of a country, is that correct?

A. That's correct.

Q. And why is that important?

A. I think that—what a spill over can have, one, you could have people get publications or media from other parts of the country, so it's probably more important to have an entire country to look at an entire country rather than a small jurisdiction.

Q. Your study focused on advertising bans, is that correct?

A. That's correct.

Q. Can you explain to us the differences between a study regarding expenditures on advertising and advertising bans?

A. When you look at the effect of an advertising ban, looking at really a much bigger variation in the exposure to alcohol advertising. It may be looking at smaller changes in alcohol advertising, it's hard to detect any kind of effect of the small changes, but looking at a ban and analyzing the effect of a ban, you're really looking at, for many people of the country, a lifetime of exposure to alcohol advertising, and I think that greater variation in the level of exposure results—is more likely to result in a finding in the effect of alcohol advertising. I thought it was important in doing the study to look at bans rather than variations in advertising expenditures.

Q. Because in a ban, you're basically starting at ground zero and measuring changes from there?

A. In a ban we're looking at the difference between no advertising and some level of advertising, which is a much bigger difference, in the level of advertising, the variation of advertising than it is in the studies that simply look at variations and expenditures. It's also, it's probably also important in a ban study that the ban have been in effect for a long period of time. Just turning it off doesn't negate the exposure that people have had for many, many years, so like until another generation goes by. The stock of exposure is still there. So it's important also not only to look at a ban, but to also look at the effects of ban over a very long period of time. The best way to do that then is to compare countries.

Q. Just one final lengthy question, Doctor; so to a reasonable degree of scientific certainty based upon your experience, the literature that you read, the fact that each of the plaintiffs in this case expect to gain at least $100,000 per year, and based upon general accepted economic principles, do you have an opinion as to what will happen to consumption of alcoholic beverages in the State of Rhode Island, if the price advertising ban is lifted?

A. Yes, I do.

Q. What is that opinion?

A. I believe if they lifted the price of advertising ban, that it would lower prices and increase alcohol consumption in Rhode Island.

MS. PARTINGTON: Thank you, Doctor; that's all I've got.

* * * *

MR. BRADY: That's how the statute reads.

THE WITNESS: Total sales?

MR. LAWSON: I object to that on the grounds that the state has not heretofore attempted to justify this ban in terms of trafficking, but has justified it in terms of

promoting temperance and in both of your pretrial memos that was the focus of the justification.

MR. BRADY: You can answer the question, if you can, Doctor?

A. Right. I think that, again, the ban on price advertising would result in lower average prices and a higher level of sales in the state, more alcohol consumption, and a higher level of sales, if that is what's meant by trafficking, yes.

Q. Unfortunately we have no legislative official to tell us what the legislative meant. In any event, over how long a period of time did the study, that international study span, the one that you conducted?

A. A 14-year time period.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C.A. No. 92-0115-P

44 LIQUORMART, INC. and PEOPLE'S SUPER LIQUOR STORES, INC.,
Plaintiff

vs.

KATE F. RACINE, in her capacity as Rhode Island Liquor Control Administrator, *et al.*,
Defendant

INTERVENORS: RILSA

DEPOSITION EXCERPTS OF
DR. REGINALD GEORGE SMART

* * * *

MS. PARTINGTON: Okay, I am focusing very specifically on this one article now for the next—for the time being.

THE WITNESS: Okay.

Q. On Page 1 of this article that we are discussing, you acknowledge that some citizens groups, politicians, some professionals and research experts sometimes assert that alcohol advertising leads to increased overall consumption, is that correct?

A. Um, probably. Can you locate me where that is exactly?

MS. PARTINGTON: It's the second sentence.

A. Oh, second sentence. Yes, certainly.

Q. So, there are some research experts who believe that alcohol advertising leads to increased overall consumption?

A. Yes, I think that's true.

Q. And is that a fair statement today? I know this is an '88 study.

A. I think it's a fair statement, today, yes.

Q. All right. Now, you go on, however, just beneath that to state that advertising and alcohol beverage industry statements claim that there is no evidence for the assertion and that their position is that advertising affects only brand shares of the market, is that correct?

A. Yes, that's correct.

Q. So, you set out there are two camps on this issue basically?

A. Yes.

Q. Okay. And on one side we have consumer's groups, government, some research experts who say there's no affect?

A. Well, I think you have some governments thinking that there is no affect and some that probably think there is an affect.

Q. And on the other side you have the advertisers and the alcohol industry saying there's no affect on total overall consumption?

A. Yes, that would be true, but I think that if you look at—if you look at, you know, people in government, there's a big variation like that.

* * * * *

Q. Okay. You disagree with that position?

A. I do disagree with it, and I think that in doing the review of the literature they have only paid attention to one of the papers that's relevant, and it's not the most —it's not the strongest or most convincing paper. It's a paper by Atkin and Block.

Q. Okay. So, you disagree with the AMA, but you realize that that position is out there?

A. Yes, I do.

Q. And that the physicians who are members of the American Medical Association have a different position than you do?

A. Perhaps that's true.

Q. Okay, and that—well, the Board of Trustees report, the Board of Trustees certainly have a different position than you do?

A. I know they would, but I am not sure what the individual physician might think.

Q. Okay. So, you're saying that the Board of Trustees of the AMA is incorrect in their position as far as advertising of alcoholic beverages?

A. Based on this review of the literature that they have, I would say that they have not done a very good job.

Q. Okay. And these are, the membership of the AMA or the members of the Board of Trustees, you don't know who that is or who that was when this was formed?

A. I don't know.

Q. Okay. However, you found that their position was significant enough to note it in your article?

A. Yes. I was trying to give all points of view.

Q. Correct, and you found it significant and noteworthy, so, therefore, you put it in your article?

A. That's right, yes.

Q. Okay. And, also, just one more point that the AMA made, I think, Doctor, I am going to ask you: Do you acknowledge that they take the position that alcohol advertising does to a limited degree appear to influence excessive hazardous and problem drinking?

A. That's certainly what their position says.

A. And you just disagree with that?

A. I think that they have not provided sufficient evidence that that's the case, and they have not really reviewed the literature.

Q. And that the Board of Trustees' position differs from yours?

A. It does.

Q. Okay. And, also, I'm still on the first page of your article, Doctor, you acknowledge and you cite J.K. Galbraith, is that J.K., is that John Kenneth Galbraith?

A. Yes, that's the famous Galbraith.

Q. Okay. And it's his position, and going back to 1958, that advertising affects both brand preference and the aggregate level of consumption, is that correct?

A. Yes, that's true.

Q. And you found that conclusion significant enough to warrant a note in your article?

A. That's right.

Q. On Page 1 of your article, as a matter of fact?

A. That's true.

Q. And you just simply disagree with that finding?

A. Yes, I do—

MS. PARTINGTON: Okay.

A. . . . with regard to alcoholic beverages.

MS. PARTINGTON. Okay.

A. I think Galbraith was talking in general and not focusing on alcoholic beverages.

Q. Okay, but you didn't mention that in your article?

A. Perhaps not.

Q. Okay. Now, Doctor, I've made it to the second page of your article at this point, where you note that a lot of the marketing of alcoholic beverages is aimed at specific segments of the market, such as youth, women and blacks, is that correct?

A. I think that's true, yes.

Q. Is that still true today?

A. I believe it is.

Q. Okay. And that leaders in the alcohol industry have stated that, and you quote, "Without growth we cannot survive," (closed quote), is that correct?

A. That's true.

Q. And do you feel that that's a fair statement today?

A. Probably it would be, yes.

Q. Okay. And then immediately after that, you, and I believe this is attributable to you, the following state-

ment, it's not in quotes, "That although beverage manufacturers claim that they wish only to increase their share of the market, total profits will increase if the market expands and the shares remain the same"?

A. That's correct.

Q. Is that an accurate statement?

A. Yes, it is.

Q. And is that still accurate today?

A. I think it is, yes.

Q. Okay. And, also, in that article, just continuing, you indicate that price is a potent influence on the level of alcohol consumption?

A. I think real price.

Q. Okay. Can you explain it to us what you mean by that?

A. Well, by real price we usually mean price which takes into account disposable income.

Q. Okay. Are you factoring into your definition of real price the search costs for the consumer to obtain a good?

A. No. I think disposable income usually means your income after you have paid for food and lodging.

Q. Okay. Do you think that—are you aware of the notion that the cost of a good should include the search cost in obtaining that good?

A. Yes, I've certainly heard that.

Q. Okay, do you agree with that notion?

A. Probably, yes.

Q. Okay. Doctor, also in your article you mention, and you mention it more than one place, I believe, that advertising has cumulative effects that are difficult to detect in studies of that nature?

A. Yes.

Q. Okay. And that's because the influence of one advertisement is likely to be insignificant, but that the impact of thousands, hundreds of thousands of advertise-

ments over the course of years and over the course of someone's life, is difficult to assess, is that correct?

A. I think it's very difficult, yes.

Q. And that's one of the problems with the studies in this subject area, is that correct?

A. I think it's a problem, but I don't think it's an insurmountable problem.

Q. Okay. And, basically, to sum up what I just said, because advertising effects might not be apparent for probably years?

A. For an individual?

MS. PARTINGTON: Correct.

A. Yes, we don't have any research showing what is the affect of advertising on people over a whole lifetime, but we have lots of research that shows us what's the affect of advertising over a whole population at a point in time.

Q. Correct. Can you turn to Page 211 of that study.

(WITNESS COMPLIED)

A. Yes.

Q. Okay. Now, there is on paragraph that begins at the bottom of the first column and continues into the top of the second that talks about the affect of price on alcoholic beverages. Doctor, I think can we establish you agree that price has an affect on consumption, price of alcoholic beverages has an affect on consumption?

A. I would say so, particularly if you relate price to disposable income.

Q. Okay. And the last—the last sentence in that paragraph that I had just cited to you by Ornstein and Hanssens does indicate a finding that the way the advertising ban works is that "A ban on price advertising raises the mean and variance of price by increasing search costs, and this results in lower consumption"?

A. I think that's a speculation on their part because they don't have any data on search costs, but I think it's a reasonable expectation.

* * * *

Q. So, we're up to 11 different conclusions concerning the affect of advertising on consumption at this point, is that correct?

A. Yes.

Q. And all of these you fund significant enough to put in your article?

A. Oh, yes, um-hum.

Q. And the Ornstein and Hanssens study, yet another conclusion, we're up to 12 at this point.

A. Okay.

Q. Okay. Now, again, reading some of the documents you brought here with you today, there was an article about banning happy hours where you note a negative relationship between alcohol consumption and price, is that a fair statement?

A. A negative relationship. Could you show me that article?

(DOCUMENT SHOWN TO WITNESS)

A. Oh, yes, okay.

Q. Can you explain to me, Doctor, what a negative relationship is?

A. Well, it would mean that as real prices go up, alcohol consumption comes down.

Q. And, inversely, as prices go down, consumption increases?

A. It should, yes.

Q. Okay. And this—many of the studies that you discuss in your various writings factor in adjacent state price, what the price is in a nearby state—

A. Yes.

Q. . . . for alcoholic beverages. And this is because a consumer will travel if they think they will save some money to purchase alcohol, is that correct?

A. Yes, that's true.

Q. And this would strengthen what we've talked about, that price does have a direct influence on consumption, is that correct?

A. Yes, um-hum.

Q. And of the advertising studies that you review, for the most, part involve lifestyle advertising of alcoholic beverages, is that correct?

A. I think there's a mixture. I think there are lifestyle ads and there are what are called tombstone or product ads.

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C.A. No. 92-0115-P

44 LIQUORMART, INC. and PEOPLES SUPER LIQUOR STORES, INC.,
Plaintiff

vs.

KATE F. RACINE, in her capacity as Rhode Island Liquor Control Administrator, Et Al,
Defendant

INTERVENORS: RILSA

DEPOSITION EXCERPTS OF DAVID J. PITTMAN, Ph.D.

* * * *

Q. All right. Are you aware of empirical evidence that would refute the conclusion that banning alcohol price advertising promotes temperance?

A. Would you repeat the question, please.

(PENDING QUESTION READ)

A. No, I'm not aware of any.

MR. LAWSON: You may inquire.

MS. PARTINGTON: Just as to the qualifications at this point?

MR. LAWSON: No, as to anything.

MR. BRADY: May we go off the record for one second.

MR. LAWSON: Sure.

MR. BRADY: —relative to what Judge Boudewyns had ruled on earlier.

MR. LAWSON: Sure.

* * * *

Q. When did you prepare this affidavit and report?

A. I prepared it this summer, basically, I forget whether it was July or August, but in that time frame.

Q. But it was prepared following a request from the plaintiffs or their attorneys?

A. That is correct.

Q. Okay, and this was something that you were paid to prepare by the plaintiff?

A. That is correct.

Q. This wasn't something that's been published?

A. No, that is correct.

Q. Do you have any plans to submit it for publication?

A. Perhaps after the case has been resolved I might want to write about the case, but at this particular time I have no plans to publish it.

Q. So it's fair to say it's prepared solely for this litigation?

A. At this time it surely is.

Q. In that report and I'm referring there's an affidavit and then there's a lengthier part at the end that you title a report, I'm talking the second part, the report, you indicate that price advertising leads to lower costs for the consumer for the product being advertised?

A. Uh-huh.

Q. Is that still your position today?

A. Oh, yes. I think that seems to be the whole—what they teach in economics, what we were taught in economics, what most economists believe; that if you have advertising, it leads to lower prices.

Q. Okay, and you agree with that position?

A. Oh, yes, I surely do.

Q. So it's your opinion then that if the Rhode Island alcohol price advertising ban were to be repealed, lower alcohol price would be a direct effect?

A. That should be a direct effect, theoretically speaking.

Q. Okay. Now, Doctor, I think I've read in a couple of studies you performed you take into account, one of

your variables is adjacent state price; am I correct in remembering that?

A. I don't think I've talked about adjacent state price. I've talked about per capita consumption and also price advertising, but not the price in adjacent states. That's not I. It might be somebody else's submitted materials on that.

* * * *

THE EFFECT OF PRICE ADVERTISING ON ALCOHOLIC BEVERAGE SALES

Gary B. Wilcox

During recent years, various consumer groups in many western nations have begun to exhibit a growing concern over alcohol consumption. Generally, the major areas of concern center on alcohol abuse including alcoholism, general heavy drinking, and drunk driving; teenage or youth consumption; and negative health aspects stemming from alcohol consumption (Jacobsen *et al.*, 1983). Resulting from this concern is a consumer movement whose main objective is to reduce both total and per capita alcohol consumption (Marketing News, 1985).

The main target of this movement is alcoholic beverage advertising to which the various collective groups attribute the responsibility for increasing consumption by targeting heavy drinkers, women, light drinkers, and the youth with multimillion dollar advertising and promotion campaigns. These groups such as SMART (Stop Marketing Alcohol on Radio and TV) and CCAA (Citizens Concerned About Alcohol Advertising) have formed to challenge alcohol advertising in the media. State/federal legislatures and the Federal Trade Commission have been involved in discussions about banning alcohol advertising or at least modifying its characteristics.

To complicate the issue, to date there have been only a few reports of empirical studies examining the effects of alcohol advertising and no clear scientific evidence that alcohol advertising increases alcohol consumption. Smart and Cutler (1976) examined the effects of the alcohol advertising ban in British Columbia on beverage consumption. Their analysis revealed that the ban showed no substantial effect on beer, wine, or liquor consumption. Pittman and Lambert (1978) concluded that alcohol beverage advertising did not appear to significantly impact the rate of alcohol abuse and alcoholism in the United States.

Bourgeois and Barnes (1979) examined the impact of per-capita alcohol consumption of banning beer and wine advertisements on Canadian television. They concluded that there was no empirical evidence for attributing increases in alcohol consumption to advertising.

Ogborne and Smart (1980) noted that the relationship between consumption and alcoholism rates for the United States and advertising regulations were very weak and not statistically significant. In the same study they found that there was little evidence that per-capita consumption changed as a result of the restriction of beer advertising in Manitoba, Canada.

To summarize, there appears to be a lack of empirical evidence that alcohol advertising increases alcohol consumption. It is important to note, however, that although a number of studies have examined the impact of general liquor brand advertising upon consumption, there has been no study to date examining the impact of alcoholic beverage *price* advertising upon liquor consumption/sales, particularly where general advertising of brands is allowed. The purpose of this paper is to examine such an issue—the effect of price advertising on sales of beer in a market in which general brand advertising is allowed.

Regulation of Alcoholic Beverages

Historically, the general population has viewed the moderate and temperate use of alcohol beverages "as a lawful growth which God alloweth to all men" (see Howie, 1933). Overindulgence, however, has been recognized from ancient times not only as an evil in itself, but also the cause of crime, cruelty, neglect, and poverty, and therefore, "a fit subject of moral and legal condemnation" (see *Gardner*).

Sale and distribution of alcoholic beverages is recognized as a privilege, not a right, and therefore, subject to governmental control. Such control includes the authority to prescribe reasonable rules, regulations, and conditions

upon which business may be conducted. Although consumption and sales of alcoholic beverages where permitted is as lawful as any other property or business and is fully entitled to protection, the sale of alcoholic beverages is seen to be "dangerous to public health, safety, and moral" and its regulation is fully justified under police power. This power is an incident of society's right to self-protection and it rests upon the right of the state to care for the health, morals, and welfare of the people (*see Pabst, Mugler, Beauvoir, South Carolina, Wilkinson, Gibbons, State, Eberle, Cosmopolitan Club*).

The power of the state to regulate or prohibit the intrastate manufacture, possession, sale, transportation, or use of alcoholic beverages is a matter of universal recognition. This power with respect to alcoholic beverages is allowed to exist as a correlative of the state's duty to support "paupers, to protect the community from crime, and to confine and maintain the criminal since alcoholic consumption is frequently a source of pauperism and crime" (see *Wilkinson, Ziffrin, Samuels*).

A state, in the application of its power to protect its people against the evils related to sale and consumption of alcoholic beverages may exercise large discretion as to the means employed (see *Ziffrin*). The form or method of regulation and control is one of the public policy decisions of each state. The state has far broader power and greater latitude for regulation, restriction of use, and distribution or consumption of alcohol than ordinary because of the effect of consumption on health and welfare of the public (see *Dupont, Miller*). The scope and extent of such regulations depends solely upon the judgment of the lawmakers, provided that they do not exceed the limits of state authority by invading rights which are secured by the Constitution of the United States, and provided further that the regulations adopted do not create discrimination against the rights of residents or citizens of other states (see *Vance*).

From this discussion, it is clear that the states have considerable authority concerning the regulation of alcoholic beverages. However, what is at issue concerning the prohibition of truthful price advertising for alcoholic beverages would be the element of Constitutional abridgement of the citizens' First Amendment rights (see Wilcox, 1982).

Since 1942 governmental regulation of commercial advertising has become a focus of controversy to established First Amendment doctrine. An increasing number of suits have raised constitutional issues regarding regulation of offensive advertising, false or deceptive advertising, and prohibitions of price advertising for various products or services. Until recently, the majority of courts upheld such regulations under the Supreme Court's ruling in *Valentine v Chrestensen* that "purely commercial advertising" is unprotected by the First Amendment.

In *Virginia State Board of Pharmacy v Virginia Citizens Consumer Council, Inc.*, the Court reconsidered the issue, declaring unconstitutional a statute that penalized druggists for advertising prescription drug prices. The Court held that commercial speech is not "wholly outside the protection of the First Amendment," and that it does not lack "all protection."

Recently, several states' prohibition of alcoholic-beverage price advertising have been challenged on grounds that they violate rights guaranteed by the First Amendment. To date, three state courts have held that restrictions on price advertising violate the First Amendment (*Brooks v State Alcoholic Beverage Control Commission, Heir v. Degnam, Wise v Tennessee Alcoholic Beverage Commission*). Currently the issue is under appeal by the Attorney General of Michigan.

The Attorney General of Michigan recently challenged the Michigan Liquor Control Commission's authority to prohibit truthful price advertising for beer. At the center of the controversy were certain administrative rules prom-

ulgated by the Commission, all of which imposed restrictions on the advertising of beer and wine by licensees of the Commission. The principal rule in question, while expressly authorizing more forms of general brand advertising of beer and wine, prohibited retailers from advertising the price of these products. Although these administrative rules, in their present form, were adopted in 1975, substantially similar restrictions have been embodied in the Commission's rule since approximately 1935.

In June of 1979, the Commission received a letter from the Governor of Michigan recommending that the Commission amend its rules so as to remove the prohibition against off-premise price advertising restrictions. In August 1979, in accordance with the Governor's request, the Commission filed proposed amendments which would have substantially reduced the restrictions on such advertising and which would have expressly authorized price advertising by businesses licensed to sell beer for off-premise consumption. These proposed amendments were approved as to legality by the Attorney General, but in December 1979 a vote to approve the proposed amendments failed to win passage before the Legislative Joint Committee.

[Tables 1 and 2 Omitted in Printing]

Meanwhile State Representative Richard Fitzpatrick made a written request for an Attorney General opinion addressing the constitutionality of the Commission's rule prohibiting truthful off-premise price advertising. In February 1982, pursuant to the request, the Attorney General issued a document stating that:

> prohibiting the truthful price advertising of alcoholic beverages was unconstitutional in that rule (1) violated the freedom of commercial speech guaranteed by the First and Fourteenth Amendments to the United States Constitution and by Article 1 of the Michigan Constitution of 1963 and (2) constituted an unreasonable exercise of the Commission's police power authority.

Following the issuance of the Attorney General's opinion, the Commission ceased enforcement of the administrative rule in question. However, in June of 1982 action was taken by the Commission seeking a declaration that the Attorney General's opinion was invalid, and a further declaration that the administrative rules of the Commission addressed in those opinions were valid and enforceable. In June 1983 an Ingham County Circuit Court judge ruled that the Attorney General did not have the power to repeal the ban in February 1982, and that the administrative rules prohibiting price advertising should be reimposed. Restrictions were again placed on price advertising in June 1983.

The Present Study

The present study examined total sales for brewed beverages sold for off-premise consumption. This total included the following types of brewed beverages: malt liquor, imported beer, price brands, popular brands, super premium brands, light brands, premium brands, and ale.

The study used information from A. C. Nielsen in-store audits for the geographic region of Lower Michigan. Sixty-five retail outlets were included in the Nielsen sample—40 food stores and 25 party/liquor stores. The sales were reported every two months for a period starting May/June 1981 and ending March/April 1984.

An analysis of variance was used to compare total sales before (period 1), during (period 2), and after (period 3)—the price advertising restrictions. The dependent measure was total sales for brewed beverages. The independent measure was the presence or absence of price advertising as determined by the restrictions noted above.

[Figure 1 Omitted in Printing]

Based on previous empirical work concerning the relationship of advertising and alcohol consumption, the following hypothesis was investigated:

There will be no significant difference between sales of brewed beverages during the price advertising restrictive periods and the price advertising nonstrictive period.

Findings

Before the analysis of sales was undertaken, a manipulation check was performed to determine if there was a significant difference in amount of local advertising between the three periods. An analysis of variance was performed using the percentage of stores engaging in local advertising for brewed beverages as the dependent variable and the presence/absence of price advertising as the independent measure (see Table 1). The analysis of variance revealed that there was a significantly higher percentage of retail stores engaging in local advertising during the nonrestrictive period.

Table 2 contains the analysis of variance results which test the hypothesis (see Figure 1). The sales for brewed beverages provide support for the hypothesis, in that the presence of price advertising appeared to have no significant effect on sales of brewed beverages.

Discussion

The findings of this study suggest that the presence of price advertising had no significant effect on beer consumption. Generally, this finding supports previous research concerning the effect of alcohol advertising on consumption in that there is still no scientific evidence that links alcohol beverage advertising to increased consumption or abuse. However, this was the first attempt to examine the effects of *price advertising* on sales in a market that allows general brand advertising for alcoholic beverages.

Applying the findings to the public policy issues point to an important conclusion. It can be assumed that a state has a valid and important interest in regulating the

advertising of alcoholic beverages. There is no question that a state should be allowed to regulate the time, manner, and place of such advertisements. Even conceding these interests, there seems to be no obvious reason to completely suppress the dissemination of truthful information about price. Indeed, the states generally allow other types of advertising for alcoholic beverages not only in the print media, but in broadcast as well.

For retailers, the emergence of national brands of beer accompanied by national advertising media budgets have built consumer recognition of the advertised brands, enabling the public to readily identify and compare price where ever sold. Because the product is recognizable, its approximate price in the market is widely known. In turn the identifiableness of brands by the consumer tends to create a maximum price on widely recognized brands within a market. An incentive for the retailer to advertise the product at a lower price and create the impression that his store offers bargains may be present. However, in areas that prohibit price advertising, this normal functioning of the market place is restricted. The retailer is restricted from fully employing his retailing strategy. While the regulation of alcoholic beverages is a very complicated issue, the total prohibition of price advertising appears to be an unnecessary restriction in a free enterprise economy.

ALCOHOLIC CONTROL LAWS AND THE CONSUMPTION OF DISTILLED SPIRITS AND BEER

STANLEY I. ORNSTEIN
DOMINIQUE M. HANSSENS *

This article tests the social marketing effectiveness of alcohol control laws designed to reduce the consumption of alcoholic beverages. The study uses state-level historical data to estimate the demand for distilled spirits and beer using economic, sociodemographic, and control-law explanatory variables. Spirits and beer consumption are found to react differently to changes in economic sociodemographic, and regulatory variables. These differences suggest a consumer and product segment-based approach to alcohol control laws or social marketing that emphasizes measures directed at youths for beer and at price for spirits.

Much research attention is given to the impact of economic and informational variables such as price, product quality, and advertising on consumer behavior. Less attention is given to the impact of market regulations, although a host of regulations is often in operation in a given market. Economic, informational, and regulatory factors are of course interrelated since, for example, regulations often change the amount and kinds of information available to consumers (Day and Brandt 1974) or the real price facing consumers. Nevertheless, the impact of regulations on consumer behavior deserves separate study to examine how effective the regulations are—especially as they relate to economic and other factors affecting consumers. What, for example, dominates consumer decisions in a given market: price, advertising, or market regulations? Although much regulatory legis-

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lation is passed, its effectivness in influencing consumer decisions is often open to question.

Another regulatory issue that has not received much attention is the interaction of regulations with consumer and product segments. Social marketers and the architects of market-influencing laws expect segmentation to maximize results—as in traditional demand-increasing efforts—since segmentation can produce larger gains than a uniform treatment of consumers and products can. It is well recognized that social marketing is a far more difficult task than traditional marketing for a variety of reasons, among them a lack of good information on consumers relating to social issues and a general inability to segment the market (Bloom and Novelli 1981). To the extent that consumer and product segments can be more clearly identified, laws and social marketing can be directed to specific market segments, reducing coercive and wasteful effects on all other segments.

This article studies these issues in a product area that has long been heavily regulated: alcoholic beverages. It looks at the fundamental, aggregate determinants of demand for alcoholic beverages in order to assess the role of regulations relative to economic and sociodemographic variables, and to identify consumer and product segments relative to regulation.

Alcoholic beverages are the tranquilizer of choice in this country, providing relaxation and facilitating social interaction for millions. But excessive alcohol consumption produces externalities of unknown size as the result of auto accidents, medical costs, fires, and social services for alcoholics. Attempts to minimize these and other alcohol-induced social costs by means of alcohol control laws have been made in many countries for centuries. While numerous studies have examined individual control laws (frequently finding little relationship between a law and consumption) or such social indicators of drinking as drunk arrests, driving while intoxicated, or alcohol

mortalities (Popham, Schmidt, and de Lint 1976), few studies have examined a variety of control laws as a group. As a result, the overall efficacy of control laws in reducing consumption and their differing effects on each beverage are in doubt. The purpose of this study is to fill this gap by estimating the impact of a variety of control measures on the demand for distilled spirits and beer. Unfortunately, wine had to be deleted because of a lack of price data.

This article is organized around a discussion of the three major groups of factors that determine alcohol consumption: economic, sociodemographic, and regulatory. After a brief history of U.S. alcohol control laws, various hypotheses about the effects of these factors are offered. Next, the results of econometric demand estimation for distilled spirits and beer are discussed, with special attention paid to models for license states. Finally, conclusions are formulated, particularly concerning the relative influence of economic, sociodemographic, and regulatory variables on consumers, and the government's ability to "demarket" alcohol products.

A BRIEF HISTORY OF ALCOHOL CONTROL LAWS

Alcohol control laws can be divided into three general categories: (1) economic legislation directed at raising revenues for the state and/or protecting sellers from competition, (2) attempts to control the social costs resulting from excessive drinking, and (3) attempts to prevent product adulteration and false advertising. Following the end of Prohibition in December 1933, each state (and in many cases, local city and county governments) adopted a wide range of alcohol control laws. Many of these—control of hours and days of sales, limited licenses, one drink sales—had been in existence at various times for centuries. The most prominently mentioned public interest purposes for such laws were the control of crime, the raising of public revenue, and the control of

problems stemming from consumption—particularly excessive consumption. The central focus of consumption control was a systematic attack on the market mechanism through price controls, limits on entry, advertising restrictions, state monopoly controls, elimination of tied houses, and bans on such nonprice competition as consumer credit, games, prizes, giveaways, and free samples. There is little doubt that following Prohibition there was broad public support for protecting the public interest by restricting competition.

Unique post-Repeal control laws restricted price competition by using resale price maintenance in license states and uniform pricing in monopoly states. The laws also restricted alcohol brand-label content and the media's use of advertising, and they eliminated tied "saloon" houses or forward integration into retail sales. They banned advertising in certain media or heavily censored its content under the justification that such restrictions would reduce the demand for alcoholic beverages. Interestingly, there is little evidence to support the view that the absence of advertising during Prohibition lowered consumption (Warburton 1932). Advertising-content regulations were also designed to prevent such false and misleading advertisements as the widespread pre-Prohibition ads proclaiming the miraculous healing powers of alcoholic beverages.[1] Label contents were regulated to control misinformation,

[1] Some of the more egregious examples of health claims appearing in liquor ads before prohibition were: "America's greatest medicine," "Nursing mothers—build up your strength and the health of your infant by taking an invigorating stimulant," "Coughs, colds, grippe, asthma, bronchitis, and consumption speedily cured," "Good for the kidneys—that concentrated essence of the juniper berry known in its purest form as gin," (Russell 1940). Before condemning advertisers for what is now known to be patently false, it should be remembered that the curative powers of alcoholic beverages were widely subscribed to for centuries. In 17th and 18th century England and America many people thought a daily ration of beer or ale was a necessary ingredient for good health and thus for life itself.

but there is some evidence to suggest that label regulations were used by existing distilled spirit manufacturers to control new firm entry (Urban and Mancke 1972).

Targeting saloons and tied houses for elimination was a central focus of temperance groups, since under the system of tied houses, manufacturers and wholesalers were said to put continual pressure on saloon-keepers to increase sales and profits. And striving for greater profits was held to be incompatible with consumption-control policies. The resulting ban on vertical integration was thought to weaken the profit motive (McGuire and Staelin 1983). A similarly specious argument was used to justify the state monopoly system of sales, which was thought to remove the profit motive from the sale of alcoholic beverages, thereby reducing sales.

There was clearly both antagonism and cooperation between temperance groups and various levels of sellers of alcoholic beverages around the time of Repeal. Conflicts existed over such policies as state monopoly selling and vertical integration. However, under the licensing system of sales, unwittingly or by design both temperance groups and retail sellers worked to restrict competition—one group seeking a reduction in drinking externalities and the other group seeking monopoly rents.

The Demand Model

There have been a number of attempts to estimate the demand for individual alcoholic beverages (Ornstein and Levy 1983), ranging from complex treatments like Niskanen's (1962) simultaneous-equation system for beer, wine, and distilled spirits and the systemwide approach of Clements and Johnson (1983) to simple single-equation price-income models, like Hogarty and Elzinga's (1972) study of the demand for beer. Many of these models share an almost complete lack of attention to the highly regulated markets in which alcoholic beverages are sold, and to how various regulations may affect the demand for

alcoholic beverages. (Major exceptions include Morin 1966; Simon 1966; Smith 1976; and Weinstein 1983). The main purpose of our demand estimation is to assess the significance of various control laws as a guide for judging their effectiveness in demarketing alcohol consumption. Since the main control laws are at the state level, this requires a cross-sectional demand model. The model in aggregate form is:

$$C_{it} = k \prod_{j=1}^{n} E_{jit}^{b_j} \prod_{j=n+1}^{m} SD_{jit}^{b_j} \prod_{j=m+1}^{p} R_{jit}^{b_j} e^{u_{it}}$$

where

C_{it} = Consumption per capita in state i in year t

E_{jit} = Economic variables ($j = 1, \ldots, n$)

SD_{jit} = Sociodemographic variables ($j = n + 1, \ldots, m$)

R_{jit} = Regulatory variables ($m + 1, \ldots, p$)

u_{it} = Error term

We postulated a multiplicative model because we expected the economic, sociodemographic, and regulatory variables to have nonlinear, interactive effects on consumption. The log-linear, constant-elasticity formulation makes it possible to distinguish increasing and decreasing scale effects. The variables tested are listed in the Exhibit.[2] Data sources are in the Appendix.

An alternative research test would have involved long time series data, which allow comparison of pre- and post-regulation effects on consumption. This is a superior test because of the potential endogeneity of regulations in each state; for example, if regulations simply reflect prior cultural attitudes towards drinking, then passing new regulations may have little effect on consumption. However, since such data are not available for all regulations for a sufficient time period, we were forced to use the cross-section analysis. The latter is nevertheless quite powerful

[2] A more complete description of the data is available from the authors.

in that it explains differences in equilibrium consumption levels under different regulatory regimes.

No supply equation is specified, since the cost of supply, absent transportation costs, is relatively invariant across states. Distilled spirits are produced in a few states or they are imported; beer is manufactured regionally because of transportation-cost considerations. Roughly three-quarters of all states have "affirmation" laws requiring manufacturers to sell to wholesalers at prices no higher than the lowest price in all other states. Finally, simultaneous-equation estimation of a cross-section model by Smith (1976) did not prove superior to ordinary least squares.

Economic Variables

The dependent variable is annual consumption per capita. For distilled spirits there is some measurement error because all sales in a given year are not necessarily consumed in that year and because some consumption comes from illegal production. But this error is minor and is taken up by the error term. More specifically, inventoried spirits are more than likely to be consumed on a regular basis, creating little distortion in any given year. Illegal production and sale is a minor problem today. For example, in 1956—the peak post-war year for federal seizures of stills—there were over 14,000 stills seized, while in 1977 and 1978 there were 481 and 361, respectively (*The Liquor Handbook*, 1979). Total consumption is deflated by the population 14 years of age and older, rather than by the minimum legal drinking age, to account for underage consumption.[3] If the starting age for

[3] Some would maintain that the dependent variable should measure the amount of consumption by heavy drinkers since heavy drinkers are primarily responsible for the social costs of drinking. Attempting to meet this argument, alcohol-related mortality as a proxy for excessive drinking was also used as a dependent variable, covering deaths from alcohol cirrhosis, alcohol psychosis, and al-

underage drinking differs across states. this can introduce some error; however, the results are insensitive to differing levels of population age deflation.

The economic variables consist of real price, real income per capita, price in adjacent states, and out-of-state travel. A conventional demand variable that is not included is the price of substitutes. Previous demand estimation studies over the past thirty years have found no consistent evidence of substitutability between beer, wine, and distilled spirits (Ornstein and Levy 1983). This lack of evidence does not mean that substitutability does not take place but rather that without large shocks to the market, substitutability is difficult to detect econometrically.

The relationship between consumption and price is subject to bias because state boundaries do not coincide with economic markets in some cases (Wales 1968). Because of price differentials between states, consumers cross state borders to purchase alcoholic beverages. As a consequence, states with relatively high prices have understated per capita consumption while states with relatively low prices have overstated per capita consumption. When this border-crossing effect is in operation, price elasticity is biased upward. To correct this bias, the lowest-price-

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coholism. The results were distinctly inferior to those obtained using mean consumption, with such perverse results as positive price elasticities. A major problem in the use of alcohol-mortality data is measurement error—reported alcohol mortalities grossly understate true alcohol mortalities. For example, in 1977 there were 18,783 alcohol mortalities reported, but HEW personnel estimate the true figure to be in excess of 200,000. The discrepancy arises from a lack of autopsies in some areas, large variance in the quality and incidence of autopsies across states and within states, and the social stigma of listing alcohol as a contributor to death on death certificates. In any event, mean consumption is a fair proxy for heavy drinking. The simple correlation between mortality per capita and consumption per capita in our samples is 0.60 for distilled spirits and 0.28 for beer, both significant at the 0.01 level. Liver cirrhosis mortality data has, however, been used successfully in other studies (Cook and Tauchen 1982).

adjacent-state variable is included. Border crossing is a function of the relative price differential between adjacent states and the cost of transportation (ignoring the cost of being caught). As a crude proxy for transportation costs the size of state is included in adjacent state price. The adjacent state price variable is measured by dividing the lowest adjacent state price by own state price and then dividing this new ratio by state size. To illustrate, holding state size constant, in states with relatively higher prices, adjacent state price is less than one, while in states with relatively low prices, adjacent state price is greater than one. In both cases, as adjacent state price increases, consumption per capita increases, leading to a positive coefficient for adjacent state price.

[Key to Variables Exhibit Omitted in Printing]

This is a crude procedure compared to that of Wales (1968), who measured population within various distances from the border of each state. However, the Wales border-crossing variable is not only costly to reproduce and subject to arbitrary measurement (how far from the border is population to be measured and how should major highways be factored in?), but it gave Wales results—zero price elasticity—that are hard to believe. In contrast, our border-crossing variable performs as predicted, correcting the upward bias in price elasticity to a plausible level.

Another major cause of out-of-state consumption is travel due to tourism, business meetings, conventions, and so on. In states and areas where such activities are prominent, such as Nevada, Hawaii, and the District of Columbia, consumption is overstated relative to true resident consumption. Lacking direct measurement of tourism and other out-of-state travel, a proxy measure is used: the percent of state payroll in hotels, motels, and courts. This variable—called tourism—should be positively related to consumption.

Distilled spirit price consists of a weighted average of manufacturer-suggested retail prices for eight leading

brands in each state.[4] The price index probably deviates from actual mean prices, but it nonetheless should provide a reliable rank ordering across states. In states where private-label selling is substantial, mean price is likely to be lower than the index reflects, but the suggested mean price should also be lower in such states. Transaction prices will also differ from suggested retail prices owing to periodic price discounting when discounting is not blocked by regulation. To the extent that discounting is due to regulatory differences across states—such as banning or allowing price advertising—these differences should be captured by our regulatory variables, as explained later. However, a price distortion may arise between monopoly states and private-license states if manufacturer discounts are not passed on to consumers in monopoly states.

Because of "affirmation" laws it may be thought that price differences across states are due solely to differing state tax levels. This is not the case. The correlation in our sample between state distilled-spirits taxes and prices is 0.42, indicating that prices differ for reasons other than tax levels. Prices may vary because of differing demand and supply conditions at the wholesale and retail levels in each state and because of differing market regulations. Certain brands and types of liquor have higher demand in some states than others. Also, where price advertising is allowed, prices should be lower.

The price of a single brand of medium-priced, nationally sold beer is used as the beer price. How representative this price is for all beer in a given state is unknown, although as a medium-priced beer it should track well with mean price. Nevertheless, because a single brand is used, estimates of the price elasticity of demand for beer are expected to be subject to greater error than are those of distilled spirits.

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[4] The brands are: Seagram's 7-Crown, Old Crow, Old Grand-Dad, Dewar's, Smirnoff, Canadian Club, and Beefeater.

Inadequate beer price data has been a persistent problem in studies of the demand for beer in the United States. Horowitz and Horowitz (1965) used state taxes on beer as a proxy for beer price, and found that price elasticity was not significantly different from zero. Weinstein (1983) used tax data, finding very low price elasticity. Hogarty and Elzinga (1972) used a weighed average price of packaged and draught beer by state for Pabst Blue Ribbon and Blatz Pilsner, using data developed in an antitrust case. They found a unitary price elasticity. No general index of beer price by state has been developed to date.

Sociodemographic Variables

Drinking surveys have shown a variety of drinking patterns across sociodemographic groups (Cahalan and Cisin 1976; Cahaan, Cisin, and Crossley 1969). For example, drinking intensity tends to be higher in urban areas, to be highest between the ages of 18 and 44, and to vary across different religious groups. Thus, variables for urbanization, for the percent of population 18 to 44, and for different religious affiliations are included in the model.

These variables are included to avoid specification error. Strong a priori arguments have not been developed to explain why these variables are related to consumption. For example, in considering the finding that there is more drinking in urban areas, one can easily speculate on such economic and sociological causes as higher income, more leisure time, greater cultural acceptance of drinking, a concentration of skid-row alcoholics, and greater peer group pressure to drink. From this list we would emphasize income, and we would expect a strong correlation between urbanization and income, but we recognize that urbanization may represent a summary statistic for non-economic explanations of consumption. Similarly, the reasons why age and religion are related to drinking are not

completely understood, but there are some well known causal factors. For example, the ability of the body to tolerate alcohol declines with age, while religion may signal strong moral convictions and peer group pressure against excessive drinking.

Religious variables by state are available for Christian religions only. Population-religion variables were constructed for Protestants, Catholics, Southern Baptists, and Latter-Day Saints. Because of their proscriptions against alcoholic beverages, the latter two denominations were combined into a single variable with an expected inverse relationship to consumption. Finer designations—of liberal or conservative Protestants, for example—were not possible. No a priori hypotheses are offered for Protestants and Catholics, although religious groups in general are likely to be more opposed to excessive drinking than are secular groups.

In addition to these sociodemographic variables, a variable measuring mean temperature is included in the expectation that distilled spirits are consumed more in cold climates and beer is consumed more in warm climates.

Regulatory Variables

The regulatory variables can be divided into four categories: retail availability, price controls, advertising restrictions, and ownership control.

Retail Availability. Retail restrictions include minimum age, number of outlets, legality of Sunday sales, legality of drug store and grocery store sales, and the existence of local option votes in dry versus wet counties. Minimum age is expected to be inversely related to consumption. The effect may not be substantial since drinking by 18 to 20-year-olds is not likely to be a large percentage of total drinking. Moreover, illegal drinking by underage youth may be widespread, cancelling out legal age differences. However, in terms of the two

beverages examined, minimum legal drinking age is expected to influence beer consumption more than distilled spirits consumption. Beverages lower in alcohol content tend to be lower in price, leading to a greater quantity demand—especially among low-income, younger drinkers.

The number of liquor outlets is measured in two ways: on-premise and off-premise. In states where it is legal for a single outlet to have both on- and off-premise sales, on- and off-premise are combined. Number of outlets is not a purely exogenous variable, since it is a function of the demand for alcoholic beverages in a given area. Thus, a positive relationship is expected, but the direction of causality is ambiguous.

Availability is also determined by sales in nonliquor stores, such as drug stores and grocery stores. Such sales are legal in certain license states, where in most cases, both drug and grocery stores are licensed to sell. As with the number of liquor outlets, since drug store and grocery store sales are not strictly exogenous variables, the meaning of a positive relationship obtained with them is ambiguous. It is interesting to include number of outlets and sales in nonliquor stores in the analysis despite this identification problem because alcohol reformers consider them to be major determinants of demand.

Off-premise Sunday sales are expected to be positively related to beer consumption and unrelated to distilled spirit consumption. Since spirits are easily stored, a ban on Sunday sales will likely affect the purchasing pattern of spirits but not the quantity of spirits consumed. Beer is not so easily stored: it is bulkier and needs to be refrigerated prior to consumption. The acts of purchasing and consuming it are generally more proximal. Thus, spontaneous decisions to drink beer on Sundays at picnics, ballgames, barbeques, beach parties, and the like can be adversely affected by a Sunday sales ban.

Legal option refers to the constitutional legality of counties voting for or against restricted sales. It is used

as a proxy for the existence of dry counties and for strong public sentiment against drinking. It is expected to have an inverse relationship to consumption.

Price Controls. Regulations that have the potential to restrict price competition are a chief concern of this study. State governments regulate price competition by means of wholesaler and retailer price-posting ordinances,[5] mandatory markup policies, and mandatory resale price maintenance.[6] In modeling these controls, mandatory resale price maintenance and markups are assumed to have identical effects: restrictions on price competition and higher prices. Price posting on retail prices is also assumed to be equivalent to resale price maintenance since it prevents retailers from lowering prices below posted levels (although the levels can be changed, generally on a monthly or quarterly basis). A composite dummy variable is thus used to reflect price fixing above competitive levels. If a state has mandatory resale price maintenance, mandatory markups, or price posting at the retail level, it is regarded as having resale price maintenance. This variable is expected to be negatively associated with consumption. Price posting also exists in some states at the wholesale level. Such information availability among a small group of nonexclusive-dealing wholesalers can facilitate price conspiracies. Evidence in support of whole-

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[5] Price posting refers to a legal requirement for each manufacturer to post its wholesale and/or retail price with the state alcohol beverage commission, usually on a monthly or quarterly basis, and to maintain those prices for a fixed period of time. This eliminates intrabrand as well as interbrand price competition for the fixed price control.

[6] Another means of influencing price is through tax policy. Excise taxes vary widely across states, ranging in 1978 from $1.50 per gallon in New Mexico, Maryland, and the District of Columbia to $4.75 per gallon in Florida for distilled spirits. Beer excise taxes in 1978 ranged from 2 cents per gallon in Wyoming to 77 cents per gallon in South Carolina. Since excise tax is reflected in the price variable, no separate variable for excise taxes is required.

saler collusion would result in an inverse relationship between wholesale price posting and consumption.

Advertising Restrictions. The main advertising media under state control are print (local newspapers and magazines), outdoor (billboards and signs), and point-of-purchase (in-store displays, window advertising, and "giveaway" novelties). Advertising restrictions consist of limitations on content (references to children, motherhood, Santa Clause, or price), value of novelties, and size of signs, as well as prohibition of contests, games, and prizes—and in some cases, total prohibition of advertising.

Critics of liquor advertising are concerned chiefly with the content of advertising messages, the total amount of advertising, and the advertising of price. Modelling content is beyond the scope of this study, and data on dollar advertising by state are unavailable. Therefore, our analysis is limited to whether billboard advertising is prohibited, whether novelties can be used, and whether price advertising is allowed in print and outdoor advertising. The effect of banning print advertising could not be tested: since only two states prohibit its use, there was insufficient variability across states.

Our a priori hypothesis holds that advertising's main effect is on intra-industry sales (shifts in sales across brands) and not on industry demand. There is little evidence of a positive relationship between industry advertising and industry consumption in alcoholic beverages (Duffy 1982; Grabowski 1976; McGuinness 1980). Therefore, no significant relationship between the presence or absence of nonprice advertising and per capita consumption is expected. Exceptions to this are novelty giveaways, since these allow discounts in kind, lowering real price. In contrast to nonprice advertising, the absence of price advertising will increase consumer search costs, raising the mean and variance of prices and reducing consumption. Conversely, in states where price

advertising is allowed, price should be lower and consumption greater. This indicates a positive relationship between price advertising and per capita consumption.

Ownership Control. The final regulatory variable is whether a state is a monopoly state; that is, whether it owns and operates the wholesale and retail distribution system or licenses private individuals and firms at the wholesale and retail level. Numerous studies have tested for consumption differences between monopoly and license states, with most finding no significant difference when holding price, income, etc. constant (Morin 1966; Popham, Schmidt, and de Lint 1978; Simon 1966). Curiously enough, no prior studies have offered a hypothesis for why consumption should differ between monopoly and license states.

One reason for differing consumption is that nominal prices tend to be lower in monopoly states, suggesting greater consumption in such states. This pattern of lower prices deserves an explanation because early justification of the monopoly system centered on keeping prices high —at profit-maximizing levels—to discourage consumption. Simon (1966) argued that lower prices in monopoly states might result from lower operating costs due to fewer, more efficient stores (for example, resale price maintenance in license states encourages large numbers of inefficient stores) or from some unexplained institutional bias toward lower prices, such as a belief that current revenues are "satisfactory" or "fair." Peltzman (1971) offers another explanation, arguing that "Government firm management will use prices to confer benefits on voters in return for effective political support for the enterprise and its management." Since tax liabilities and purchases differ across voters, all voters will not gain from a lower price. But if a sufficient number of voters can be given a price reduction that exceeds their tax liability, then prices will be lower. Peltzman maintains that in low-priced whiskies, prices are lower in monopoly

states than in open states, providing greater benefits to low-income groups.

Whatever the reason for lower prices in monopoly states, holding everything else constant, lower prices should lead to greater consumption. But as just noted, most studies find no difference in consumption. The question is whether after holding price, income, religion, etc. constant, there is a basis for hypothesizing lower consumption in monopoly states because of the form of ownership.

Form of ownership can clearly change the incentives of managers and employers. By limiting competition and severing the link between profits and rewards for managers, monopoly systems will reflect a totally different operation, changing the real price to consumers. For example, brand selection is greatly restricted in monopoly states, with state stores carrying only leading brands. By not carrying private-label and cheaper brands available in license states, monopoly states restrict consumption. In addition, shopping costs are, in general, higher in monopoly states: there are far fewer outlets—about a third of the outlets available in license states, on average; store hours are greatly restricted; and in-store layouts and product displays in some monopoly states make brand selection a costlier process. Contrary to studies based on list prices, monoply states effectively raise the true price to consumers. This should result in lower consumption in monopoly states.

Sample and Parameter Estimation

The sample for distilled spirits was constructed from observations made on 50 states plus the District of Columbia during the years 1974-1978 and resulted in 255 observations. For beer, price data were missing in two states, Hawaii and Alaska, and were only available for the years 1976-1978, yielding an initial sample of 147 observations. We chose a pooled time-series cross-

section sample in order to have sufficient degrees of freedom, given the large number of explanatory variables, and because we anticipated multicollinearity problems. A Chow test for pooling across years on the distilled spirits sample yielded an F-ratio of 0.195, insignificant at the 0.01 level, indicating that model homogeneity across years cannot be rejected. A similar test for the beer sample produced an F-ratio of 0.182, which is also highly insignificant. Since the primary variation is across states and not over time, we made the assumption that the 1976 beer-price data were applicable for 1974 and 1975 (using 1974 and 1975 beer-price deflators), making the number of beer-price observations compatible with all other variables.

Parameter estimation was done using ordinary least squares (OLS), ordinary least squares with dummy variables (OLSDV), and variance components (VC) methods. These methods imply different assumptions about the stochastic structure in the pooled time-series cross-sectional design. When using OLS, the error term is assumed to be totally stochastic across states and over time. At the other extreme, OLSDV assumes the existence of a fixed intercept for every state, capturing all state-specific effects that are not in the model. Finally, VC assumes a random intercept for each state; this places VC in between no state specific effects (OLS) and fixed state intercepts (OLSDV).

The reported findings are based solely on OLS estimation for two reasons. First, OLSDV could not provide unique estimates of the state intercepts because of apparent linear combinations between some intercept and regulatory dummy variables. Second, the assumption of random intercepts, implied by the VC method, is difficult to justify when one models the entire population of cross sections (Judge et al. 1980, p. 331). Indeed, the primary objective of the empirical analysis is to explain differences in per capita consumption across all states;

thus the fifty-one cross sections are not a random sample of a large population. The VC estimates, which are very close to the OLSDV estimate of the slope coefficients, were occasionally meaningless (e.g., nonsignificant price effects, probably because of collinearity between the random intercepts and some explanatory variables (Judge et al. 1980, pp. 336-338). While the OLS results may overstate somewhat the significance levels of some estimates, they are very stable, and for the most part, economically plausible.

EMPIRICAL RESULTS

Distilled Spirits

The regression results for the full sample are in Table 1 and for license states only in Table 2. We divided the total sample in this manner, since certain regulatory variables—drug and grocery stores, resale price maintenance, etc.—are applicable only in license states. Three or four regression equations are presented for each sample tested. Multiple regression runs were used to illustrate the stability or sensitivity of the parameters in light of the presence of collinearity. Certain variables are collinear—print-price and billboard-price advertising, income and youth, and resale price maintenance and wholesale price posting. As a consequence, certain collinear variables were selectively deleted to test the sensitivity of the results to multicollinearity.

All States. Table 1 shows that price is highly significant. The coefficient of price suggests that demand is price-inelastic, but in almost every case the coefficient is not significantly different from one at the 0.05 level. There is, however, some confounding between price and adjacent-state price because price appears in the adjacent-state price variable as well. However, the net effect of adjusting price for its component in adjacent-state price is to raise the price coefficient about 0.06; that is, closer

to —1.0. In the absence of holding adjacent-state price constant, price would be biased upward, and in fact, when adjacent-state price is dropped from equation 1.1 (see Table 1), the price coefficient rises to —1.085. But clearly, there is a significant adjacent-state price effect, requiring its inclusion. In short, holding constant adjacent-state purchasing effects, price elasticity is approximately unitary.[7]

[Table 1 Omitted in Printing]

The other economic variables—income and tourism—are consistently positive and significant, as expected. Income is inelastic, a finding consistent with previous studies (Ornstein and Levy 1983). Tourism is highly significant in each case and is the most important variable in terms of explaining variation in consumption.

The sociodemographic variables are all significant and have the expected sign, except youth, which is insignificant. Urbanization is positive, which is consistent with previous studies. Youth is insignificant in each equation in Table 1, suggesting that distilled spirits consumption is unrelated to the age distribution of the population. Youth and income, however, are strongly correlated, which obscures the results for youth. When income is dropped, youth becomes positive and significant. However, the causal meaning of youth is unclear, since youth is a proxy for such determinants of drinking as income, tastes, and physical capacity to handle alcohol.

The religious variables are all negative and significant, supporting the view that religious affiliation fosters less drinking. Contrary to our expectation that the Baptist variable would show the strongest relationship, Protestant

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[7] Previous price elasticity estimates for distilled spirits in the United States range from 0.0 to —2.0, while estimates for European countries are typically less than —1.0 (Ornstein and Levy 1983). The results of any given study for the United States seem highly sensitive to the sample tested and also to the specification of the model and the method of estimation.

appears to have the largest effect; however, the size of Protestant's coefficient and level of significance is the most erratic of the three religious variables across the models tested. Thus, although we cannot establish which religion has the strongest effect, Christian religious affiliation as a whole is consistently inversely related to consumption, as expected. Temperature, the last variable in the sociodemographic category, is negative and highly significant, supporting the a priori expectation that the consumption of distilled spirits is greater in colder climates.

The regulatory variables present a mixture of significant and insignificant results, although as a group they are significant. The group significance should not be overstated, however; as we will show, one significant variable (billboard advertising) has a contrary sign, and a second significant variable (number of licenses) has an ambiguous relationship to consumption. Minimum age, Sunday sales, and local option are all generally unrelated to consumption. The minimum age result is consistent with prior findings (Barsby and Marshall 1977) and suggests that youthful drinkers tend to prefer beer and wine to distilled spirits. The Sunday sales variable is significant in equations 1.2 and 1.3 (see Table 1), but has the wrong sign. The on-premise licenses per capita variable is consistently positive and significant, but as indicated before, the direction of causality between consumption and licenses is ambiguous. When the off-premise licenses variable is used, it is insignificant. This results from its high correlation with monopoly of —0.75. When licenses are deleted there are no major changes, although Catholic is only marginally significant.

The price-advertising variables (bans on print and billboard-price advertising) are both positive and significant in equations 1.2 and 1.3, respectively (see Table 1). This finding supports the view that price advertising leads to lower price and higher consumption. In a separate study, it was found that absence of price advertising raised mean

price approximately three percent (Ornstein and Hanssens 1984). In contrast, general advertising on billboards shows perverse results, since the sign of billboard is counterintuitive. The novelty giveaways variable is positive, indicating a lower effective price and thus higher consumption. However, its significance is sensitive to the inclusion of off-premise outlets and Catholic affiliation.

The last regulatory variable—monopoly states—is negative and significant, indicating that consumption is approximately 8 to 12 percent lower in monopoly states after holding all other variables constant. This finding suggests that there is something unique occurring in monopoly states beyond the factors that have been controlled for that leads to lower per capita consumption. As indicated earlier, in the absence of competition and the ability to share in profits, demand-increasing efforts are reduced. This is reflected in number of outlets, convenience of store hours, brand availability, and lack of promotion relative to private license outlets.

The economic and sociodemographic variables, then, account for most of the explained variation, indicating the relative unimportance of the regulatory variables. Moreover, price, income, and tourism are the variables with the largest elasticities, while the regulatory variables have the smallest elasticities. Lack of explanatory power coupled with low elasticities indicates that manipulation of regulatory variables is likely to have a very minor impact on the consumption of distilled spirits, unless they indirectly affect price.

License States. The purpose of the license-state regressions is to test regulatory variables unique to license states—namely, resale price maintenance, wholesale price posting, and legality of sales in drug and grocery stores (see Table 2). The results show drug-store sales to be insignificant in each regression, but grocery-store sales (equation 2.2) to be positive and significant. Resale

price maintenance is negative and generally significant, as expected, supporting the usual inverse relationship between consumption and price. Wholesale price posting is negative but insignificant in most cases, providing no support for the hypothesis that price posting facilitates wholesaler collusion. The correlation between resale price maintenance and wholesale price posting (equal to 0.52), does not influence this finding: in unreported regressions, resale price maintenance remains negative and significant when price posting is deleted and price posting remains negative and insignificant when resale price maintenance is deleted. The results on some of the remaining variables for license states differ from those for all states. This is not unexpected, since the variance of the estimates and collinearity worsen with the smaller sample.

[Table 2 Omitted in Printing]

To summarize the results on regulatory variables, for all states price advertising, novelties, and monopoly-license distribution are significantly related to consumption, but the significance of novelties is sensitive to collinearity. In the case of license states, resale price maintenance and novelties are related to consumption. Other regulatory variables such as minimum age, Sunday sales, drug-store sales, wholesale price posting, and total billboard-advertising bans are either unrelated or perversely related to consumption. Moreover, the regulatory variables explain a minute proportion of consumption and have very small elasticities. This suggests that regulatory changes, outside of those that impact on price, have little or no affect on consumption.

Beer

All States. Price and income have a far less significant impact on beer consumption than on distilled spirits consumption. As Table 3 shows, for all states the demand for beer is highly price inelastic. (Prior studies found price elasticities clustering around —0.3 to —0.4; Ornstein and Levy 1983). The adjacent-state price variable

is not included on the assumption that a low-price, high-bulk item like beer does not justify interstate travel. Income is unrelated to beer consumption (this is also consistent with prior beer demand studies). However, the results on income are obscured by collinearity with youth. When youth is omitted, income becomes positive and marginally significant. Tourism is, once again, highly related to consumption.

[Table 3 Omitted in Printing]

Results for the sociodemographic variables for beer show major changes from the results for distilled spirits. Youth is now strongly positive and significant, with the highest elasticity of all the variables. The importance of youth is reinforced in the minimum-age variable, which shows that the lower the minimum age, the higher the beer consumption. These two variables indicate the crucial importance of age distribution to the consumption of beer. The contrast between the significance of youth to beer and the insignificance of youth to distilled spirits is striking, supporting the view that youthful drinkers prefer beer. Another major change from results for distilled spirits is that the religious variables for beer are now positive and significant. This is unexpected in the case of the Baptist variable, since it measures Baptist and Latter-Day Saints affiliates, and since neither religion allows the drinking of any kind of alcoholic beverage. This positive association suggests that religious proscriptions do not include beer, or that if one cheats, drinking beer is perhaps less sinful than drinking distilled spirits. Finally, temperature is unrelated to beer consumption, providing no support for the hypothesis that beer consumption is greater in warmer climates.

The regulatory variables are again significant as a group but offer mixed results for each individual variable. Number of outlets presents a measurement-error problem since we do not have data on beer-license-only outlets. Off-premise licenses for the sale of beer only, for example,

are common in monopoly states. Lacking such data, the number of on-premise outlets was judged to be more reliable for beer, although some states issue on-premise licenses for beer and wine only. Nevertheless, the number of on-premise outlets is positive and significant, as was the case for distilled spirits.

A unique finding for beer is the positive and significant relationship of Sunday sales to consumption. This supports our a priori hypothesis that beer consumption is more a function of immediate availability due to higher storage costs. Local option is marginally significant in the case of beer versus distilled spirits.

Billboard advertising is insignificant in most regressions, consistent with the hypothesis that advertising's primary influence is on individual brand shares and not on industry demand. Novelty giveaways is insignificant for beer in contrast to distilled spirits. Separate regressions to test for the sensitivity of billboard advertising and novelty giveaways to collinearity resulted in no changes. Price advertising is positive and significant for billboard but not for print advertising, giving partial support to the search theory of advertising in the case of beer. The last difference between beer and distilled spirits results is that monopoly is insignificant for beer, indicating no difference in consumption between monopoly and license states. This last result may be due to the large number of beer-only outlets in monopoly states.

License States. The license-states results in Table 4 show that resale price maintenance is negative and marginally significant, which is consistent with the results for distilled spirits. Wholesale price posting is consistently negative and highly significant for beer, in contrast to the findings for distilled spirits. Because of collinearity between resale price maintenance and wholesale price posting, separate unreported regressions were run, but no changes were found.

Thus, the major differences between the beer and distilled spirits results are as follows:

- Beer consumption is strongly related to youth, but distilled spirits consumption is unrelated to youth. Price and income are far more inelastic for beer demand than for distilled spirits demand.
- Religious affiliation tends to be associated with greater beer consumption but lower distilled spirits consumption.
- Availability on Sundays is important to beer consumption but not to distilled spirits consumption.
- Beer consumption is not significantly different between monopoly and license states, in contrast to distilled spirits consumption.

SUMMARY AND CONCLUSIONS

The main determinants of interstate differences in per capita consumption of distilled spirits are price, income, and interstate travel—not differences in alcohol-control laws. Control laws are either unrelated to distilled spirits consumption, as in the cases of minimum legal age and Sunday sales, or are related but with very low elasticities, as in the cases of resale price maintenance and print and billboard price advertising. This suggests, not too surprisingly, that control laws affecting price have the greatest impact on consumption. In the case of beer, the primary influence on demand is the youthfulness of the population. Control laws with the strongest relationship to beer are minimum legal age and Sunday sales. Price and income are far more inelastic for beer than for distilled spirits, implying that control laws influencing price will have a relatively lesser effect on beer consumption than on spirits consumption. The practical importance of these findings in terms of reducing drinking externalities is unknown since the relationship between changes in mean consumption and drinking externalities is as yet unknown.

From a public policy perspective these results can be used for a segment-based demarketing of alcohol. Price intervention through tax increases, resale price maintenance, or bans on price advertising will have a much larger effect on spirits consumption than on beer consumption. The history of state excise taxes shows that they are rarely changed, except at times of budgetary crises. Resale price maintenance in alcohol has been on the decline for years and is fast disappearing in light of recent legal rulings.[8] But advertising bans are increasingly being called for. Ten states proposed legislation to ban advertising in 1983, and a variety of public interest groups called on the Federal Trade Commission to restrict the advertising of alcoholic beverages. A ban on price advertising raises the mean and variance of price by increasing search costs, and this results in lower consumption (Ornstein and Hanssens 1984).

Availability by age is a key consumption determinant for beer. Minimum legal drinking age for beer varies across states, with 28 states having below-age-21 drinking standards in 1983. Raising the minimum drinking age to 21, as The Presidential Commission on Drunk Driving proposed in 1983—a federal standard now being forced on states by threat of a loss of federal highway funds—will reduce beer consumption. However, for both beer and distilled spirits the influence of control measures is small relative to that of sociodemographic and economic variables that affect consumers' overall attitudes toward drinking. For example, higher urbanization and increased tourist activity were found to be strongly associated with higher alcohol consumption. Since these phenomena are often observed in modern societies, they suggest that the task of controlling alcohol consumption may not become easier in years to come.

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[8] California Retail Liquor Dealers Assn. v. MidCal Aluminum Inc. et al., 445 U.S. 97 (1980).

Clearly, this study only begins the process of demand estimation for consumer and product segments of alcoholic beverages. With survey data such as that available for cigarette consumption (Lewit and Coate 1982), more detailed relationships can be uncovered. Elasticity could be measured by intensity of user or by more narrowly defined sociodemographic groups—sex, race, education, etc. Social marketing would do well to direct its efforts at individual product lines, not at alcoholic beverages as a whole. Targeting specific consumer segments may be more efficacious than targeting drinkers in general.

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STATE MONOPOLIES AND ALCOHOLIC BEVERAGE CONSUMPTION

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Abstract

Fifteen states have state monopolies to regulate the retail distribution of distilled spirits or wine. One objective of state ownership is the reduction of consumption. However, previous research supports both no effect and a negative effect of state monopoly (control) states on consumption.

Using improved data on prices, this paper provides a mixture of classical and Bayesian estimates of beverage-specific demand functions. The analysis is carried out at the state level for the year 1982. Independent variables include the real own-price, substitute prices, income, tourism activity, religious sentiment, youth proxy, and several regulatory measures including monopoly control, bans on price advertising, minimum legal drinking age, and restrictions on the number and type of retail outlets.

The results indicate no direct effect of monopoly control on consumption that is separate from effects manifested by higher prices or, for beer, limited outlets. Furthermore, average prices are not significantly greater in the monopoly states. Several possible explanations are advanced to explain these results, including the likelihood that the higher transaction costs in the monopoly states are a tax on consumption of alcohol.

1. Introduction

Following the repeal of Prohibition in 1933, the task of regulating the distribution and consumption of alcoholic

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beverages was left primarily to the states. Each state established its own system of control, but certain common features were broadly shared. All of the states set a minimum legal drinking age, ranging from 18 to 21. All states enacted special excise taxes on alcoholic beverages, and most placed restrictions on advertising, hours of legal sale, number and type of outlets, local "dry area" options, and so forth. Fifteen states created state monopolies to control the retail distribution of distilled spirits.[1] In the remaining 35 states and the District of Columbia, some form of licensing system was adopted to regulate the number and operation of retail outlets. Many of these regulations have recently been the subject of public scrutiny and debate. For example, between 1970 and 1976, 30 states reduced the minimum drinking age, but between 1976 and 1984, 27 of these states again raised the age limit. In California, 50 cities banned the common-site sale of alcoholic beverages and gasoline (McCarthy and Umbeck 1988), while Kansas voters recently amended the state constitution to permit liquor-by-the-drink (Hersch and McDougall 1988). The state of Iowa terminated its retail monopoly in 1987, but a similar proposal was defeated in Pennsylvania.

Arguably, state liquor monopolies are established and maintained for two reasons. First, as an attempt to ameliorate certain undesirable side-effects of alcohol consumption, states may institute public ownership of retail liquor stores. The absence of a private liquor lobby, for example, makes it easier to enact legislation which limits advertising, sales to youth, number of outlets, and hours of operation. Second, a liquor monopoly may be a pre-

[1] The control states are listed in table 1. The states of Michigan, Mississippi, and Wyoming primarily control wholesales through state-owned warehouses which sell to private retail establishments. These states are included among the license states. Retail stores in Oregon are operated by independent contract agents. This state is included among the control states.

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ferred alternative to an excise tax as a means of generating revenue for the general fund. This occurs if a state monopoly permits a greater degree of control of alcoholic beverage prices and costs (Simon 1966) or because there are political advantages to differential rates of taxation across beverages, brands, and customer groups (Peltzman 1971).

This paper examines the effect of state monopolies and other regulations on the consumption of distilled spirits, wine, and beer. I attempt to determine how and to what extent monopoly-control states have been successful in limiting alcohol consumption. In contrast to earlier studies, I examine this basic question for all three types of alcoholic beverages. In eleven of the states, wine retailing is also subject to monopoly control. Retailing of beer is exclusively a private enterprise, although it may be that various laws and the general regulatory climate influence consumption in the monopoly states. I test for the effect of state monopolies on consumption of all alcoholic beverages, which provides some indirect evidence about the second possible motive for this form of regulation.

Previous empirical studies of state monopolies have obtained conflicting results. Simon (1966) found no evidence that distilled spirits consumption was lower in monopoly states after controlling for price, per capita income, and total outlets per capita. Wilkinson (1987) reported similar results for a measure of total alcohol (ethanol) consumption per capita. On the other hand, Zardkoohi and Sheer (1984) and Ornstein and Hanssens (1985) reported diminished levels of distilled spirits consumption in the monopoly states. The latter study also found that beer consumption was not significantly different between monopoly and private-license states. None of the above studies consider wine consumption.

Each of the above studies is subject to various criticisms. The number of explanatory variables considered

in Simon (1966) and Zardkoohi and Sheer (1984) is very limited. On the other hand, Wilkinson (1987) and Ornstein and Hanssens (1985) have such a large number of variables in their regressions that multicollinearity must be a problem.[2] In addition, Wilkinson's use of total ethanol consumption is inappropriate for regulatory analysis and Ornstein and Hanssens employ price data which are either currently unavailable (distilled spirits) or proprietary (beer).

While the amount and quality of the price data has been limited in earlier studies, both Simon (1966, 189) and Zardkoohi and Sheer (1984 1075) reported lower average distilled spirits prices in the monopoly states. Furthermore, there is ample evidence to indicate fewer outlets per capita in the monopoly states (Simon 1966, 192; Zardkoohi and Sheer 1984, 1071; table 1 below). Limitations on the number of outlets, plus other monopolistic restrictions on brand selection, hours of service and advertising, will raise the true or full cost of alcoholic beverages in monopoly states. Hence, even if monetary prices are lower, the net effect of monopoly control may be to reduce consumption. This hypothesis will be tested in the present study using an econometric technique which avoids the "data-mining" approach exemplified in Wilkinson and in Ornstein and Hanssens.

The present study differs, therefore, in several important respects from the earlier studies. First, retail transactions prices are used in cross-sectional demand functions for

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[2] Simon (1966) reports regression containing six or seven regressors and Zardkochi and Sheer (1984) report results for four regressors. In contrast to these studies, Ornstein and Hanssens (1985) considers 26 regressors and Wilkinson 17 regressors. In Zardkoohi and Sheer (1989, 1073) the dummy variable for monopoly control has t-values of 1.90 and 1.71, which indicates statistical significance in a one-tailed test only. In Ornstein and Hanssens (1985, 207), the dummy variable for monopoly control has t-values of 3.05, 2.12, and 2.19.

beer, distilled spirits, and wine. Second, a Bayesian method is used to deal with the econometric problems of specification uncertainty and multicollinearity. Third, the estimates for wine are unique. In addition, empirical problems are discussed and dealt with for cross-border purchases, adjacent-state price competition, and shipment-based consumption estimates. In the remainder of the paper, Section 2 describes the price and consumption data and presents some descriptive statistics comparing monopoly control and license states. Section 3 contains the general model specification. Section 4 discusses the econometric techniques employed and presents the empirical results. Section 5 summarizes the main finding and discusses some economic implications of state monopolies.

2. Beverage Prices, Consumption, and Outlets

A number of economic studies provide estimates of price and income elasticities of demand for alcoholic beverages.[3] A major problem in earlier studies has been the availability of data on retail transactions prices for alcoholic beverages. Cross-sectional beer demand studies have used state taxes on beer as a proxy for price differences (Horowitz and Horowitz 1965; Weinstein 1983), wholesale prices provided by manufacturers and other confidential data sources (Hogarty and Elzinga 1972; Schweitzer, Intriligator, and Salehi 1983; Ornstein and Hanssens 1985), and average price estimates from the trade publication *Beverage World* (Uri 1986). None of these measures provided higher R^2 in preliminary regressions or could not be replicated for disclosure reasons.

Separate studies of the demand for wine in the United States have been rare, especially cross-sectional studies by state. Folwell and Baritelle (1978) employed survey panel data from the National Purchase Diary Corporation for 1975. More recently, Heien and Pompelli (1989)

[3] For surveys and additional evidence, see Grossman, Coate, and Arlock (1987) and Ornstein and Levy (1983).

used the 1977-78 USDA Household Food Consumption Survey. Price data for home consumption of wine and other beverages were constructed from the expenditures and quantities reported by individual households. While these data are useful for estimation of demand systems, they are of limited applicability for studying regulatory effects across states.

Cross-sectional studies of the demand for distilled spirits have been far more numerous because shelf price data by brand can be obtained from surveys conducted by the Distilled Spirits Council of the United States (DISCUS) or Jobson's *Liquor Handbook*. Among the cross-sectional demand studies that have used these data are Wales (1968), Smith (1976), Zardkoohi and Sheer (1984), Ornstein and Hanssens (1985), and Swidler (1986b). However, 1984 was the last year these price data were made available in published form.

Other investigators have aggregated across beverages by converting each type of beverage to its ethanol equivalent consumption (Hoadley, Fuchs, and Holder 1984; Wilkinson 1987). The DISCUS price data are then used to explain total ethanol consumption. This procedure is questionable on several grounds. First, it assumes that people consume a beverage solely for its absolute alcohol content and that the ethanol content of each beverage is similar across brands and states. Second, in order to aggregate in this manner, it must be the case that the relative prices of beverages are constant and can be represented by the average price of distilled spirits. This assumption, while plausible in an aggregate time series (see Levy and Sheflin 1983), is questionable on a state basis, due to differences in tax rates and allowable mark-ups. Third, empirical results reported here and elsewhere indicate significant differences in price and income elasticities by beverage. These and other beverage-specific differences cannot be recovered from studies which aggregate by ethanol content.

The price data used in the present study are obtained from the quarterly price survey Inter-City Cost of Living Indicators, published by the American Chamber of Commerce Researchers Association (ACCRA).[4] The ACCRA survey covers 59 goods and services, including three alcoholic beverages. City chambers of commerce participate in the survey on a voluntary basis, gathering local retail price data from telephone, letter, or in-person surveys. Regional coordinators review the data for consistency. The number of cities participating exceeds 225, thereby producing a wide base of data on cities of all sizes in all geographic areas of the country.

Alcoholic beverage prices in the survey include the price per six-pack of beer (Schlitz or Budweiser brand) in 12-oz. containers, the price per 750-ml. bottle of Seagram's Seven-Crown whiskey, and the price per 750-ml. bottle of Paul Maisson Chablis wine. I assume that prices for these popular brands will track well with the mean price for each beverage type. The beer price used here is a city-population weighted-mean price for the second and third quarter of 1982, while the spirits and wine prices are city-population weighted-mean prices for all four quarters of 1982. Cities which reported only once were excluded from the latter calculations. Alaska and Hawaii are excluded due to lack of necessary data.

The consumption estimates in the present study are based on shipment data reported by the leading industry trade publications (see the data appendix). These data have been the subject of some criticism by Cook (1981). First, they exclude illegal and home production, but there is no evidence that such activities are currently important. Second, wholesalers may underreport their sales in order

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[4] More extensive discussions of the ACCRA survey data can be found in Healy and Cox (1982) and Hogan and Rex (1985). Because the ACCRA cost-of-living index does not include taxes, I use the broader-based BLS cost-of-living index for major metropolitan areas as a deflator for prices and income by state.

to evade state taxes, thus biasing shipment data downward in high tax states. These illegal activities have been investigated by Smith (1976), but with generally inconclusive results as to their importance. Third, some residents of a state may obtain alcoholic beverages from an adjacent state if the price differences between the two states make this activity worthwhile. Empirical issues associated with adjacent-state price competition are discussed below. Fourth, shipments made to a given state include sales made within that state to non-resident visitors and tourists. Empirical solutions to this problem are also discussed below.

An alternative data series for alcoholic beverage consumption has been derived from state excise tax data by Doernberg and Stinson (1985). Examination of these data reveal that they differ little from shipment-based consumption estimates. For beer, the simple correlation (r) between shipment-and tax-based consumption estimates is $r = 0.989$. The distilled spirits and wine data in Doernberg and Stinson are a mixture of industry shipment- and tax-based estimates. A few states show significant differences for unknown reasons, but industry consumption data are highly correlated with the Doernberg and Stinson data ($r = 0.993$ for spirits and $r = 0.992$ for wine). I have chosen to use the industry data for comparability with earlier demand studies.

Various descriptive statistics for consumption, prices, and outlets are displayed in table 1. In order to reflect some degree of underage drinking, all per capita consumption estimates are for persons aged 16 and over. I assume that beverage demand functions are homogeneous of degree zero in prices and income. Therefore, all price and income variables in this study are expressed in real terms by deflating by a geographic cost-of-living index derived from the broadly based BLS family budget survey of Fall 1981. Previous studies that use undeflated prices and income variables may find significant results for

selected variables which happen to be correlated with state cost-of-living differences.

Table 1 shows that per capita consumption of each beverage is lower on average in control states compared to license states, but the differences are not statistically significant. Mean real prices for beer and wine are identical across samples. Real spirits prices are higher in control states, but the difference is again not statistically significant. The variance and range of prices for each beverage are less in the control state sample, reflecting price affirmation and other uniform pricing policies (see Swidler 1986a). Total outlets and off-premise outlets per capita are significantly less in the control states, although the same is not true for on-premise outlets. A major difference between the two types of regulation is therefore availability of alcoholic beverages from retail stores. The next section investigates the effect of availability and other variables on beverage consumption. I attempt to determine which types of regulations are important, based on a rigorous reporting method for alternative specifications of the regression model.

[Table 1 Omitted in Printing]

3. Model Specification

The single-equation cross-sectional demand model, estimated separately for beer, spirits, and wine, has the following general form:

$$\log Q_{ij} = a_i + b_i \log P_{ij} + c_i \log S_{ij} + d_i \log Y_j + e_i R_{ij} + f_i C_{ij} + u_{ij}$$

where Q_{ij} is per capita consumption of the i-th alcoholic beverage in the j-th state, P is the real own-price, S is the real price of a substitute beverage, Y is real per capita disposable income, R is a set of regulatory variables affecting availability and information, and C is other cultural and demographic variables thought to condition the consumption of a given beverage. The regression coefficients for the i-th beverage are given by a_i through f_i, and u is the error term. Theoretically, P, S,

and Y are the main variables that constrain the consumption opportunity set of all individuals. The R and C variables apply more selectively because of state differences in legal, cultural, or demographic conditions.

The dependent variable in (1) is mean per capita beverage consumption, denoted by *BEER*, *SPIRITS*, or *WINE* for persons aged 16 and above in the year 1982. The major economic variables consist of the mean real own-price (*OWN-PRICE*) of beer, spirits, or wine for 1982 or selected quarters thereof, mean real per capita disposable income (*INCOME*) averaged over the entire state population, a proxy variable for state tourism activity (*TOURISM*), and the mean real price of a substitute beverage (*SUB-PRICE*).[5] For obvious reasons, the expected coefficient signs on the first three variables are negative, positive, and positive, respectively. However, previous studies have found no consistent evidence on substitutability among alcoholic beverages because the high correlations among beverage prices usually limit the ability to detect substitution relationships (Ornstein and Levy 1983, 341). For example, in the present study the correlation between beer and spirits prices is 0.630, between beer and wine, 0.697, and between spirits and wine, 0.714. A Bayesian approach, discussed below in Section 4, is used to deal with this problem.

Beverages sold in adjacent states are potentially close substitutes for a home state's retail beverages. Since Wales's (1968) initial discussion of the problem of adjacent-state price competition, several empirical solutions have been proposed. Smith (1976) suggested the use of the lowest adjacent-state price expressed relative to the home state's own-price. Ornstein and Hanssens (1985) used the same variable deflated by the geographic size of the home state. Smith's variable is correlated with the

[5] The price of beer is used as the substitute price for spirits and wine, while the price of spirits is used as the substitute price for beer.

home state's own-price (for spirits the correlation in the present study is r=0.652), and deflating by areal size produces a highly skewed distribution. The use of the lowest adjacent-state price is also misleading, since there are only nine states in the 1982 sample that dominate all adjacent states by virtue of lower spirits prices. For the majority of the states, with both lower and higher adjacent prices, the effect on consumption of interstate purchases is uncertain. However, as pointed out by Swidler (1986a), adjacent-state price competition is expected to occur more frequently in those control states that practice uniform pricing within their borders. In these states, direct market forces cannot equalize transportation-adjusted prices and, as a consequence, interstate spirit purchases are more likely to have an effect on measured home state consumption. In the present study, the effects of adjacent-state price competition is captured in a control state dummy variable.

Four regulatory variables are considered in the model. The first is a dummy variable equal to one for control states (*CONTROL*). Control states typically have more limited availability of outlets, brand selection, hours of business, and so forth. These restrictions raise the full costs of spirits and wine. Because of uniform pricing, more interstate purchases are likely to be made by residents of control states. Both of these effects reduce state consumption and are expected to produce a negative coefficient sign on *CONTROL* for spirits and wine. This variable is also included in equation (1) for beer. The sign is uncertain. It will be negaive if monopolistic controls extend to beer, but positive if these controls control lead to higher transaction costs for substitute beverages.

The second regulatory variable is the total number of outlets per capita (*OUTLETS*). A larger number of outlets reduces transaction costs of beverages, and *OUTLETS* should therefore have a positive coefficient sign. The variable specification employed here is total outlets

per capita, which includes both on- and off-premise outlets.[6] Control states have fewer total outlets per capita and they especially restrict the number of off-premise outlets.

Availability of alcohol is also influenced by the legality of sales in nonspecialty stores, such as grocery or drug stores (*STORE*). For beer and wine, *STORE* is a dummy variable equal to one if legal sale is permitted in grocery stores. For spirits, *STORE* is a dummy variable equal to one if legal sale is permitted in drug stores. A positive sign is expected on *STORE*, reflecting a reduction in per unit transaction costs of shopping trips.

Some states limit the availability of beverage information by banning billboards or preventing price advertising on billboards or in printed media. I include a dummy variable equal to one if the state bans price advertising in printed media (*ADBAN*). The expected coefficient sign is negative. On theoretical grounds, bans on price advertising should raise consumer search costs, thereby lowering consumption and raising the mean and variance of prices.

The last regulatory variable is a dummy variable (*AGE*) for minimum legal drinking ages (MLDA). Previous studies have encountered difficulty in obtaining significant results for an age variable (see Hoadley, Fuchs, and Holder 1984; Ornstein and Hanssens 1985). These authors suggest that drinking by persons less than 21 is simply not quantitatively important relative to total consumption or that the limited variability of age variables prevents cross-sectional examination. Use of a dummy variable has several potential advantages over

[6] This specification is adopted because of possible reporting errors in these data. The basic results are unchanged if outlets are divided into on- and off-premise outlets. Because the number of outlets may be endogenous, these variables were all lagged one year. However, in most jurisdictions the number of outlets is based on population and not on per capital consumption.

previous studies. First, age laws are discrete and categorical in nature. Second, dummy variables probably do a better job of capturing the effect on consumption due to border crossing by underage youth from adjacent states. Third, states with a common drinking age may possess other common characteristics which are difficult to measure, such as operation of drinking establishments that appeal to youth. The specification used in this study is *AGE* equals zero if the MLDA is 21 and is equal to one otherwise.[7] In general, the overwhelming importance of beer as the drink of choice among youth means that the effect of *AGE* may vary across beverages, but its sign should be positive for beer.

Previous demand studies have included a host of state cultural and demographic variables including temperature, urbanization rate, population density, employment and occupation status, ethnic origin, race, religion, age distribution, and unemployment rate. Only the last three variables are considered because most sociodemographic measures tend to be highly correlated with either prices or income. Two major religious groups, Southern Baptists and Latter-Day Saints, have proscriptions against the consumption of alcoholic beverages. The influence of religious beliefs on drinking sentiments is measured by the percentage of a state's population who report themselves to be adherents to the Southern Baptist or Latter-Day Saints religions (*RELIGION*). The expected sign is negative. In addition, because the drinking preferences of youth are often thought to differ from the rest of the adult population, the demand equations include a variable for the percentage of a state's population between the ages of 16 and 24 (*YOUTH*). The expected coefficient sign for *YOUTH* is positive for beer, reflecting both legal and illegal drinking behavior. The effect on

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[7] The variable *AGE* is specified by beverage. In 1982, the legal drinking age was 21 in fourteen states for beer, twenty-four states for spirits, and twenty states for wine.

other beverages is uncertain if increased consumption of beer also has a positive demonstration effect on consumption of wine or spirits.

Lastly, McCornac and Filante (1984) present evidence indicating that spirits consumption is greater when a state's unemployment rate (*URATE*) increases. They suggest that the cost of unemployment must be extended to include the social costs of increased consumption of distilled spirits. The present study attempts to replicate their findings for all three types of beverages in a cross-sectional context. The expected coefficient sign on *URATE* is positive, ceteris paribus.

4. Econometric Methods and Empirical Results

A number of studies of economic regulations employ state cross-sectional data. The natural experiment created by economic, political, and cultural differences among the states leads to a variety of outcomes with respect to the type, timing, or severity of regulations. Earlier studies of alcoholic beverage consumption typically consider numerous explanatory variables. However, econometric studies using state-level data are forced to employ small samples with restricted variation, and this can create statistical problems associated with multicollinearity. I first discuss selected aspects of the multicollinearity problem and describe the econometric methods used to deal with it in this study. Following this discussion, the empirical results are presented in two parts.

Multicollinearity arises when there is an approximate linear relationship among two or more explanatory variables. Coefficient estimates obtained from such data tend to be sensitive to the model specification, reflecting the multidimensional nature of the sample information. In other words, collinearity problem exists if the interpretation of the sample evidence about a coefficient depends on the uncertain prior information about the other parameters (Leamer 1978, 1976). If economic data

could be obtained from controlled experiments, then the collinearity problem could be eliminated by proper experimental design. However, this is rarely possible. Instead, it is a common practice among researchers to search over some subset of possible model specifications and to report selectively the results of this search. Often, the purpose of the search is to examine or highlight the stability of certain key "focus" variables in the study. Because the specification search and reporting of results are selective and often arbitrary, the stability of the focus variables may be overstated. And if a collinearity problem exists, it will be difficult to interpret the data evidence in a parameter-by-parameter manner.

Leamer and Leonard (1983) propose that researchers provide a thorough study of the sensitivity of posterior estimates to explicit prior beliefs concerning the importance or magnitude of so-called doubtful variables, i.e., those variables whose inclusion or exclusion from the regression model are in doubt. Prior beliefs are formally expressed in the form of a stochastic constraint $RB = r + v$, where B is a $k \times 1$ vector of regression coefficients, r is a $q \times 1$ vector which contains the researcher's prior information about the mean values of the B's, and R is a nonsingular $q \times k$ matrix which embodies prior knowledge about linear relationships among the B's. The disturbance term v is assumed to be normally distributed with mean zero and variance-covariance matrix V. The matrix V is not required to be known.

Suppose that $q < k$ variables are labeled doubtful variables in a given model. This is the same thing as saying that q prior means are zero. Given q constraints, there are 2^n possible ways of imposing them on the regression morel and therefore 2q possible constrained estimates. The set of estimates obtained by including or excluding any linear combination of the doubtful variables is found by setting R equal to the identity matrix and the prior mean vector equal to a vector of zero. This procedure

effectively mimics the ad hoc interpretive searches used when multicollinearity renders the posterior distribution highly sensitive to changes in the prior. Leamer and Leonard (1983) suggest that researchers report the extreme values of the posterior or Bayesian estimator and that the interval produced by these values be compared to the sampling uncertainty interval, where the latter is given by, say, the 95 percent confidence interval.

To apply these procedures, my reading of earlier studies lead to treatment of the following economic and regulatory variables as focus variables: price, income, tourism, monopoly control, minimum age, and number of outlets. Six additional variables are selected for treatment as doubtful variables: substitute price, youth percentage, religious affiliation, unemployment rate, type of outlet, and bans on price advertising. None of these are obviously important factors, but each has received some emphasis in one or more earlier studies.

Least Squares Estimates. Table 2 presents regression estimates obtained by ordinary least squares.[8] The first regression for each beverage includes only the six focus variables, while the second regression contains all twelve variables. The variable *PRICE* has a negative coefficient and is significant in all six regressions. The demand for beer is price inelastic, although an elasticity of -0.4 to -0.6 is not trivial. The demand for spirits is approximately unitary price elastic, while wine demand is price elastic.

[Table 2 Omitted in Printing]

The variable *INCOME* is positive and significant in five of six cases. Beer demand is income inelastic, wine is income elastic, and spirits are approximately unitary elastic. The variable *TOURISM* is positive and significant in all six regressions, with spirits having the largest

[8] The estimates were checked for heteroskedasticity using the Goldfeld-Quandt test. Since the sets of regressors are essentially identical, estimation by seemingly unrelated regressions would not produce a gain in efficiency compared to OLS.

elasticity and beer the smallest. *OUTLETS* is positive and significant for beer, but there are no significant coefficients for spirits or wine, and in the two of four cases the wrong signs appear. *CONTROL* has the expected negative sign in all six regressions, but it is never statistically significant. *AGE* has the correct positive sign in all six cases, but it is statistically significant in only one instance.

Among the doubtful variables, *RELIGION* has a negative sign and is statistically significant for spirits consumption. *STORE* has a positive coefficient, indicating that the availability of wine in grocery stores has the effect of increasing per capital consumption. None of the coefficients for the remainder of the doubtful variables are statistically significant at conventional confidence levels.

Extreme Bounds Estimates. The inferences obtained from the least squares estimates rest on only two model specifications from numerous possible alternatives. Given all possible linear combinations of the doubtful variables, extreme values of the estimates delineate the ambiguity about a coefficient induced by the choice of model specification. If the interval produced by the extreme bounds is small relative to the sampling uncertainty, then the ambiguity in the model may be considered irrelevant since all models lead to essentially the same inferences. The results for a particular variable are thus robust. But if the interval is broad, the results produced by any particular model specification are fragile and should be treated with appropriate caution.

Table 3 shows the sensitivity results produced by Bayesian search procedures developed by Leamer (1978) and described in Leamer and Leonard (1983). For each focus variable, I present the extreme lower and upper bounds produced by including all possible weighted combinations of the doubtful variable in the regressions. Following Leamer and Leonard's suggestion, this range can be compared to the sampling uncertainty interval as de-

termined by a 95 percent confidence level. In all cases, the latter interval is larger than the former interval.

[Table 3 Omitted in Printing]

These results indicate that the own-price, consumer's income, and tourism activity are robust determinants of alcoholic beverage consumption. That is, the regression coefficients for these variables are statistically significant, and the lower and upper bounds produced by the Bayesian procedures do not contain both positive and negative signs. Of the other variables, only *OUTLETS* in the beer regression meets both tests of robustness. The results for all other focus and doubtful variables are too fragile to be acceptable estimates.[9]

5. Conclusions

This paper estimates the consumption effects of state monopolies using cross-sectional alcoholic beverage demand functions for the year 1982. Separate estimates are provided for beer, distilled spirits, and wine. The regressions incorporate a number of regulatory variables including state monopoly control, number of outlets, type of outlet, minimum legal drinking age, and restrictions on price advertising. Using a mixture of classical and Bayesian econometric procedures, I show that a beverage's real own-price, consumer's real disposable income, and state tourism activity are determinants of per capita consumption. Regulation of the total number of outlets also has an effect on beer consumption. None of the other economic, regulatory, or cultural variables can be considered as statistically significant and robust determinants of alcoholic beverage consumption. In particular,

[9] In other work, I have examined the robustness of the results when individual states are deleted from the sample. Deletions are based on the Belsley-Kuh-Welsch diagnostics for influential data. In particular, deletion of DC, NH, and NV have no noticeable effect on the significance of the control dummy for distilled spirits. These results are available upon request.

there is no evidence that monopoly control has a direct effect on consumption, although indirect effects may occur through the price level. These results are generally consistent with Simon (1966), but contrast sharply with the more expansive results reported by Ornstein and Hanssens (1985) and others.

We must, therefore, look at other possible implications of state regulation to discover the intent or effect of monopoly control. One possibility is that some or all of the monopoly rents are captured by labor unions in the form of higher wages, shorter working hours, and so forth. Evidence consistent with this outcome is found in Zardkoohi and Sheer (1984). Since monopoly systems are reputed to have some advantages in purchasing wholesale liquor and wine, this may help explain why control state and license state prices do not differ on average.

Second, despite differences in form, the substance of regulation under control vs. license states may not differ significantly. Retail outlets in license states are privately owned but heavily regulated and restricted. These regulations extend to the level and structure of prices, entry into the market, advertising of product, and so on. As a result, the differences between the two types of regulation are possibly more apparent than real, and this is reflected in the regression estimates.

Third, given that transaction costs are higher in monopoly states, consumers are being taxed indirectly through inconvenient store locations, shorter hours of operation, limited brand availability, and inadequate advertising. The effect on consumption depends on whether most consumers treat these extra costs as a lump-sum tax or a per unit tax on their purchases. In the former case, the general incentive is to reduce the number of shopping trips, increase the average amount purchased per trip, and increase the average inventory held for future consumption. The beginning of purchases for off-premise con-

sumption is affected, but the level of consumption is not.[10] The results in this paper are not inconsistent with this possibility.

More generally, Noll (1989, 1255) argues that the market failure rationale for regulation has three components: first, a positive theory of conditions under which market outcomes are inefficient; second, a normative theory of government actions to improve market efficiency; and third, a positive theory of the effects of government intervention. The present study indicates that government ownership of liquor and wine distribution as a means to reduce alcohol consumption has been unsuccessful. From a governance structure standpoint (Crew and Kleindorfer 1986, 148), the choice of governance mode for alcohol sales should therefore depend on minimization of total transactions costs. While certain selling costs will be higher under private enterprise, we can be fairly certain these reflect consumer demand. The same cannot be said for monopoly.

[Data Appendix Omitted in Printing]

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[10] The consumption measures are for total consumption, which combines off- and on-premise consumption. A related effect of monopoly control will be a shift in purchases away from off-premise consumption. We can expect that bar and restaurant owners would be strong supporters of state ownership.